

1 UNITED STATES DISTRICT COURT
 2 WESTERN DISTRICT OF WASHINGTON
 3 AT TACOMA

4 UNITED STATES OF AMERICA,)	Docket No. CR05-5828FDB
5 Plaintiff,)	Tacoma, Washington
6 vs.)	February 26, 2008
7 BRIANA WATERS,)	VOLUME 11
8 Defendant.)	

10
 11 TRANSCRIPT OF PROCEEDINGS
 12 BEFORE THE HONORABLE FRANKLIN D. BURGESS
 SENIOR UNITED STATES DISTRICT COURT JUDGE, and a jury.

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1 TUESDAY, FEBRUARY 26, 2008 - 9:00 A.M.

2 * * *

3 (Jury not present.)

4 THE CLERK: This is in the matter of United States of
5 America versus Briana Waters, CR05-5828FDB.

6 Would counsel please make their appearance for the record?

7 MR. FRIEDMAN: Good morning, Your Honor. Andrew
8 Friedman and Mark Bartlett for the United States.

9 MR. FOX: Good morning. Neil Fox and Robert Bloom
10 for Ms. Waters, who's present.

11 THE COURT: All right. We are ready to continue with
12 Mr. Torres?

13 MR. BLOOM: Yes.

14 THE COURT: Have Mr. Torres come in and take the
15 witness chair.

16 Mr. Torres, just take the witness chair and remember, you
17 are still under oath.

18 All right. Bring in the jury.

19 (Jury present.)

20 THE COURT: All right. You may be seated.

21 Good morning to you. We are ready to continue where we
22 left off with Agent Torres.

23 MR. BLOOM: Good morning.

24 ANTHONY TORRES, previously called, further testified as
25 follows:

1 DIRECT EXAMINATION - Continued

2 BY MR. BLOOM:

3 Q. A few more questions about your dealings with Jennifer
4 Kolar.

5 Now, when she spoke to you that same day, December 16th,
6 she told you that she had participated in the Susanville
7 arson; is that correct?

8 A. Yes, sir.

9 Q. She told you that one of the things that she did was she
10 went in with four buckets of gasoline; is that correct?

11 A. I think I testified yesterday that I wasn't sure if that's
12 what she told us. I'd have to review my 302.

13 Q. Could you take a look at the 302, which is Exhibit A-27?
14 I am sorry, I misdirected you.

15 Could you take a look at your notes, which is Exhibit
16 A-29, and look at page -- the last three digits are 309?

17 A. Yes, I see that.

18 Q. Did she tell you anything about that she went in with four
19 buckets, about the third line down?

20 A. Yes. It says, "I went in with four buckets with Jack. He
21 set two. I set two."

22 Q. She set two buckets with gasoline to go up in flames to
23 burn down that facility. That's what she told you, right?

24 A. Yes, some kind of flammable liquid. I don't know if it
25 was gas, but that's correct.

1 Q. She was not just a peripheral figure in that arson, she
2 was deeply involved in the actual event; is that correct?

3 A. She was involved.

4 Q. That's what she told you?

5 A. Yes.

6 Q. I am going to leave that day, December 16th, and I am
7 going to move on to the next time you spoke to her, which
8 would have been -- am I correct -- about two-and-a-half, maybe
9 three weeks later, January 6th of 2006?

10 A. No, sir, I was not at that meeting.

11 Q. You were not there?

12 A. No.

13 Q. Did you come to learn that there was an interview on that
14 date --

15 MR. BARTLETT: Okay. The question should be what
16 this witness has permanent knowledge about, not something he
17 might have learned about reading other reports. He should
18 just go to this witness's personal knowledge.

19 THE COURT: Let me ask you, because this is your
20 witness you are calling --

21 MR. BLOOM: Yes.

22 THE COURT: -- so I am trying to understand why you
23 are going over something involving this case that he says he
24 wasn't there at the meeting.

25 MR. BLOOM: All right. I am going to move on. I

1 don't disagree, except that you shared --

2 MR. BARTLETT: Objection, we don't need an editorial.

3 THE COURT: The objection is well taken. I don't
4 want you to go into explaining anything. If I rule on it,
5 stop it there and then move to the next question.

6 MR. BLOOM: That's fine. I will do just that.

7 BY MR. BLOOM:

8 Q. Did you share information with Agent Halla at this
9 investigation?

10 A. Yes.

11 Q. Did you share information with Mr. Friedman and
12 Mr. Bartlett in this investigation?

13 A. Yes.

14 Q. Did there come a time when you yourself participated in an
15 interview with Jennifer Kolar any time after December 16th of
16 '05?

17 A. Yes.

18 Q. When was that?

19 A. I believe the next one was January 12th.

20 Q. At the January 12th interview, did she tell you of her
21 participation in the Santa Cruz book club meeting?

22 A. That's correct.

23 Q. She gave you the names of the people who were present?

24 A. I believe so. I would have to refer to the documents, but
25 I believe that's correct.

1 Q. When you say the documents, do you mean the 302 or your
2 handwritten notes or both?

3 A. Both.

4 Q. Do you have in front of you -- I am going to get the
5 exhibit for you to look at. But meanwhile, let me ask you,
6 did she tell you in that interview that she had participated
7 in an arson at the Cavel West --

8 MR. BARTLETT: Objection, Your Honor. Ms. Kolar has
9 testified. That testimony is in front of the jury. If there
10 is a prior inconsistent statement that he wants to elicit from
11 this witness, that is proper at this point in time. But
12 simply to rehash what Ms. Kolar and Special Agent Halla have
13 already testified to is simply not allowed under the Rules of
14 Evidence.

15 He should not be allowed to go over all the evidence that
16 was already heard. If he wants to get prior inconsistent
17 statements out, that's admissible. This is not.

18 THE COURT: Maybe he can tell me what he's trying to
19 do.

20 MR. BLOOM: I am trying to do exactly what
21 Mr. Bartlett suggests, prior inconsistent statements.

22 THE COURT: Then you may ask the question.

23 BY MR. BLOOM:

24 Q. I am sorry, I may not have given you A-33. Do you have
25 A-33 in front of you?

1 THE CLERK: No.

2 MR. BLOOM: Thank you. It's on the way. It's in the
3 mail.

4 BY MR. BLOOM:

5 Q. Now, preliminarily, if you look at page 3 of that
6 exhibit -- it may not be on page 3, but I am sure you can
7 remember -- did she tell you about how she had bought a whole
8 bunch of soap, dozens of bars of soap?

9 MR. BARTLETT: Objection, that isn't an inconsistent
10 -- prior inconsistent statement. That's exactly what
11 Ms. Kolar testified to. That's what I am objecting to.

12 MR. BLOOM: If I may --

13 THE COURT: What's prior inconsistent about that?

14 MR. BLOOM: That first question is not a prior
15 inconsistent statement, but I am setting the stage for what
16 she told him. I can only ask one question at a time.

17 THE COURT: All right. Answer the question. What I
18 am concerned about, Mr. Bloom, is we are going over and over
19 and over like a broken record and I am trying -- if we don't
20 have to do that, there's no need to do that. I want you to go
21 to something that is going to assist the jury in this case.

22 MR. BLOOM: No witness, other than Ms. Kolar, has
23 testified to this event --

24 THE COURT: Mr. Bloom, ask the question, please.

25 BY MR. BLOOM:

1 Q. Do you remember she told you she bought dozens of bars of
2 soap and she processed it into a paste of some kind; is that
3 correct?

4 A. Are we referring to the January 12th interview?

5 Q. Yes. I am thinking, did you take handwritten notes?

6 A. I don't recall if I did or not. If you have them, I would
7 like to have them, please.

8 Q. What I want to talk about is if there is anything in this
9 document that refreshes your recollection or helps you recall
10 whether she talked about, on January 12th, what she did with
11 regard to Cavel West.

12 MR. BARTLETT: Your Honor, I might have the wrong
13 302. I am not seeing anything in my report on this issue at
14 all.

15 MR. BLOOM: I would appreciate not being interrupted
16 in my examination.

17 THE COURT: He's making an objection about whether
18 it's prior inconsistent.

19 MR. BARTLETT: I think there's a chance we are on the
20 wrong 302.

21 THE COURT: It may be. Let me see you get some
22 questions down the line and maybe some determination can be
23 made. If I can stop the two of you from going at each other
24 and jumping up and down, we may get through this.

25 MR. BLOOM: I think Mr. Bartlett is actually correct.

1 I think I am discussing the wrong interview. It was the
2 interview which he was not present.

3 THE COURT: Then move to the right one.

4 MR. BLOOM: I am going to move on and not ask
5 questions about that. Mr. Bartlett is correct that --

6 THE COURT: I don't need you to editorialize. If I
7 say just move on, just go on to the next one. You don't need
8 to comment on it.

9 MR. BLOOM: Fine. Fine.

10 THE COURT: Okay.

11 BY MR. BLOOM:

12 Q. Now, on January 12th, an interview which you were present,
13 that's where she talked about Santa Cruz; is that correct?

14 A. Yes.

15 Q. She gave you -- am I correct -- she gave you names of
16 people who were at that meeting; is that correct? Look
17 through at page 3.

18 A. Yes, I see that.

19 Q. And Briana Waters was not one of those people; is that
20 correct?

21 A. Her name is not listed.

22 Q. Correct. That was a meeting where you were informed by
23 Ms. Kolar that what was discussed was Chelsea Gerlach talked
24 about using codes; is that correct?

25 MR. BARTLETT: Objection, Your Honor. This is all

1 consistent with what Ms. Kolar testified to. There's nothing
2 inconsistent about these questions.

3 THE COURT: I am waiting. He says he's going to get
4 to something inconsistent, so I am waiting on that to happen.

5 A. Can you repeat the question?

6 BY MR. BLOOM:

7 Q. Yes. That is the meeting, that discussion of January 12th
8 where she was talking about the Santa Cruz book club meeting,
9 one of the things she told you was that Chelsea Gerlach taught
10 all the people present about how to use codes; isn't that
11 correct?

12 THE COURT: Hasn't that been covered, Mr. Bloom?

13 MR. BLOOM: It's been covered by Ms. Kolar. If I
14 may, I am not limited to just talking about prior inconsistent
15 statements. If I may -- I am talking about, and I am allowed
16 to question about what it is he learned from Ms. Kolar on that
17 day.

18 Even if she has testified consistently, I can still talk
19 about that and where that led the investigation, and that's
20 what I am trying to do.

21 MR. BARTLETT: I disagree. The conversations between
22 Ms. Kolar and this witness, her statements to him, are
23 hearsay. They are inadmissible. The only thing admissible at
24 this time through this witness, that he chose to call, are
25 prior inconsistent statements.

1 Those are the Rules of Evidence. If he wants to explain
2 what prior inconsistent statement he wants to elicit and go
3 into, that's perfectly allowable. But simply to rehash what
4 Ms. Kolar has already testified to, that is consistent with
5 her testimony, is not allowed under the Rules of Evidence.

6 THE COURT: All right. Mr. Bloom -- let me have you
7 folks step out for a moment.

8 (Jury not present.)

9 THE COURT: Okay. Be seated. Mr. Bloom, it is my
10 understanding now, you called this witness?

11 MR. BLOOM: Yes, I did.

12 THE COURT: It is your witness, so you are calling
13 this witness, I guess, to rebut or to find something
14 inconsistent about whatever testimony that you are looking
15 for?

16 MR. BLOOM: In part.

17 THE COURT: Otherwise, then it would be your witness
18 as to the events of which this Defendant is here today. So
19 why are we going and rehashing, going over and over again,
20 what the witness has already testified, if it's not what you
21 are getting from this witness, inconsistent to that?

22 MR. BLOOM: I don't see where you are saying over and
23 over again. There was testimony from Kolar --

24 THE COURT: Then I would suggest you get the
25 transcript and read it, if you don't think you are going over

1 it and over it again.

2 I am talking now about how you approach questions that
3 would be as to this witness. What do you want from this
4 witness? Do you want to see something that's different than
5 what you heard?

6 MR. BLOOM: I would ask that the witness be excused
7 while we discuss this.

8 THE COURT: All right. Why don't you step outside.
9 (Witness departed courtroom.)

10 MR. BLOOM: One of the things, in addition to prior
11 inconsistent statements with regard to the witnesses with whom
12 he spoke, I am also entitled to explore, just as they were
13 entitled to explore, the direction and the events of this
14 investigation. That's much of what they did. I don't see why
15 we can't do the same thing.

16 MR. BARTLETT: And I have no objection --

17 THE COURT: Wait until he's through.

18 MR. BLOOM: I am done.

19 MR. BARTLETT: I have no objection to that. If he
20 wants to put the witness on the stand and indicate, did you
21 have a conversation with Ms. Kolar on January 12th, yes.
22 Pursuant to that conversation, what did you do in this
23 investigation? There's nothing improper about that.

24 What is improper is to painstakingly rehash and rehash
25 what Kolar has already testified to. Her statements to this

1 witness are only relevant with regard to if they are prior and
2 inconsistent. If they aren't, he can merely ask what he did
3 with this investigation, and that can go fairly quickly and we
4 can get done with this trial.

5 MR. BLOOM: Judge, they spent two weeks on this
6 trial.

7 THE COURT: They have to put on a case. They have
8 the burden here. But I want -- I am dealing now with what you
9 are trying to elicit from this witness, other than a
10 regurgitation of this over and over or reading these things
11 that are going over and over and over again. I want you to
12 ask something that would go to the defense of this witness,
13 other than, like I said, I am seeing a wheel here. That's all
14 I am saying to you.

15 MR. BLOOM: I am not sure what the Court means by
16 over and over. Kolar testified to this. Nobody else
17 testified to this. This is the first questions about this, of
18 any witness. What's over and over?

19 THE COURT: You've asked all the questions of her
20 when she was on the stand. Now you are asking questions of
21 him, what did she say to him that would be inconsistent with
22 what the testimony would be.

23 MR. BLOOM: That's one, and as we've acknowledged and
24 Mr. Bartlett has acknowledged --

25 THE COURT: Let me put it this way. When I think you

1 are going over and over again, I am going to tell you to move
2 on.

3 MR. BLOOM: I am asking for the Court's basis of over
4 and over. I have never asked these questions of him.

5 THE COURT: When I think you are asking a question
6 improperly, I am going to ask you to move on.

7 MR. BLOOM: That's legitimate, but I am wondering
8 where the Court gets -- can I be heard, please?

9 THE COURT: You can be heard. You keep talking.
10 Tell me when you are through.

11 MR. BLOOM: I will. I have never asked these
12 questions. One witness, Kolar, has testified about what she
13 says happened with regard to, for example, buying a bunch
14 of -- I am sorry, talking about another issue, talking about
15 the codes, what was discussed at the Santa Cruz book club
16 meeting. She has testified about that.

17 First of all, we are not bound to accept the truth of her
18 testimony. This is a witness who heard her talk about that on
19 January 12th. I am entitled to ask what it was that she said
20 on that day.

21 Now --

22 THE COURT: And your purpose?

23 MR. BLOOM: -- and where that took the investigation.
24 I am entitled to ask that, in addition to being entitled to
25 ask about prior inconsistent statements. Both of those things

1 are legitimate areas of inquiry, and this is no over and over.

2 I don't know where the Court is coming from by over and over.

3 THE COURT: Have you completely made your record,
4 sir?

5 MR. BLOOM: I am finished, sir.

6 THE COURT: Bring the jury in.

7 MR. BARTLETT: If I could just be heard. It is no
8 different than the United States -- the fact that he is the
9 opposing party is irrelevant with regard to an analysis of
10 whether or not this is admissible testimony. It would be no
11 different for me to call Ms. Kolar to the stand, get all of
12 the direct out, and then called Ted Halla and say gee, tell us
13 everything she told you, and go through all the direct
14 examination again. It is not allowable. He can say it is.
15 It isn't.

16 THE COURT: This is a little bit different because
17 you are talking about two witnesses who would be your
18 witnesses.

19 MR. BARTLETT: Prior inconsistent statements, that's
20 the only thing he can bring out through this witness.

21 THE COURT: Let me do this. Let me ask the two of
22 you to let me do my best to run this case.

23 MR. BLOOM: Of course.

24 THE COURT: Bring in the jury.

25 (Jury present.)

1 BY MR. BLOOM:

2 Q. Agent Torres, just in general -- I will be very direct
3 here -- you learned from Jennifer Kolar or you heard from
4 Jennifer Kolar on January 12th of '06, that she particularly
5 had brought PGP disks to distribute to each of the
6 participants; is that correct?

7 A. Yes.

8 Q. You came to learn that she instructed the group at some
9 point; is that correct?

10 A. Yes. The 302 states that Kolar taught the group how to
11 use PGP encryption and anonymizer and other security type
12 software.

13 Q. Speaking to her on that day, is it fair to say that you
14 realized that Jennifer Kolar was very much at the center of
15 this group of people, a very important, integral part of the
16 operations of this group of people who were doing arsons?

17 A. Well, I don't know if I would say she was at the center of
18 this or an integral part of it. My understanding is, several
19 people came to the meetings with possibly their own areas of
20 expertise and security. Computer security was maybe her area
21 of expertise. I wouldn't say she was a central part of that.
22 I am not sure.

23 Q. Well, you did also come to learn by that time that she was
24 involved in, count them, four arsons, right?

25 A. Well, the initial meeting, she told us she was involved in

1 three. Which is the fourth you are referring to?

2 Q. The Wray Gun Club that she remembered, quote/endquote, at
3 some point before this interview?

4 A. Yes. At some point, I do recall her mentioning that she
5 took responsibility for the Wray Gun Club incident, yes.

6 Q. So by January 12th of '06, you had come to learn that she
7 did instruction of the other people on security, provided PGP
8 disks, and was a person who was actively involved in four
9 separate arsons?

10 A. What I am saying --

11 Q. Is that true?

12 A. No, I haven't answered the question.

13 Q. Okay. Go ahead, please answer.

14 A. What I am saying is on January 12th -- I am trying to
15 recall if that's the meeting where she said she was
16 responsible for the Wray Gun Club or not.

17 Q. Even if it was after, right, by the time you understood --
18 you understood, did you not, that she was involved -- let me
19 withdraw that.

20 By the date of this interview, January 12th, you
21 understood that she was involved in at least three separate
22 arsons in which she was an active participant?

23 A. That's correct.

24 Q. And you understood that she did this instruction at the
25 Santa Cruz book club meeting with regard to security issues?

1 **A.** Yes.

2 **Q.** Is it fair to say you had come to understand by that time
3 that this woman was a major criminal?

4 MR. BARTLETT: Objection, Your Honor. This is
5 argument.

6 THE COURT: Sustained. That's argument. Move on.
7 BY MR. BLOOM:

8 **Q.** Now, is it true that she told you that there was -- at the
9 Santa Cruz meeting, there was a next book club meeting that
10 was scheduled for Olympia; is that correct?

11 **A.** Yes.

12 **Q.** And that she was asked to find a location for that?

13 **A.** Yes.

14 **Q.** Again, an indication to you, was it not, that she was a
15 very active member of this group of people?

16 **A.** She was a member of this group of people. It was still
17 unclear how active she was, but she was a member of this
18 group.

19 **Q.** Did she go on that day, which is January 12, 2006, to talk
20 about the Olympia meeting, the next book club meeting? If you
21 look at page 6.

22 MR. BARTLETT: We've just gone through the first
23 meeting. There's nothing inconsistent. We are rehashing what
24 we've already heard. I object to this line of questioning.

25 MR. BLOOM: Excuse me, you tell me no speeches.

1 THE COURT: He can make an objection. What I am
2 asking is, when I say move on to something that would be
3 inconsistent or what's been different than what's been
4 testified to.

5 MR. BLOOM: I am allowed to ask the progress of the
6 investigation --

7 THE COURT: Ask the question.

8 MR. BLOOM: --what he learned.

9 THE COURT: Ask the question.

10 MR. BLOOM: -- what he learned from Jennifer Kolar is
11 important.

12 THE COURT: Ask the question.

13 BY MR. BLOOM:

14 Q. I am asking you, sir, about what you learned from Jennifer
15 Kolar on January 12th, okay.

16 Did you learn from her that the next book club meeting was
17 in Olympia?

18 A. The second meeting?

19 Q. The second meeting she had been to.

20 A. Yes.

21 Q. Did she give you the names of the people that she
22 remembered being at that book club meeting?

23 A. That's what I am trying to find in the 302, where it
24 specifically says who was at that meeting.

25 Q. Let's just skip that.

1 A. Okay.

2 Q. At the January 12th of '06 interview, was she shown
3 photographs?

4 A. Yes. On that page, page 6, it says Kolar was shown
5 photographs of the following individuals.

6 Q. Was she shown a photograph of Briana Waters?

7 A. It looks like that's No. 4.

8 Q. Right. Did she state to you that this person, in that
9 picture, looked like Briana?

10 A. The 302 states that it says, "Kolar stated this individual
11 looked like Briana."

12 Q. Did she say at that point, Briana, the person who was the
13 lookout at the University of Washington arson? Did she say
14 that?

15 A. I don't recall if that's what she said or not.

16 Q. You certainly would have written that down if she said
17 that, right?

18 A. Perhaps. I am not sure.

19 Q. Why would you have not written that down if she said that?

20 A. Do you have my notes, sir?

21 Q. I don't have your notes.

22 A. Well, then I don't know if I would have written it down or
23 not. I am not exactly sure what she said.

24 Q. Whatever it was she said, it didn't wind up in the 302,
25 right?

1 **A.** I am not saying that. Like I have testified before, our
2 notes aren't transcripts of the interview. So we are not
3 writing down everything she says.

4 **Q.** If she had said, Briana Waters, looking at that picture,
5 that's the woman who was at the University of Washington
6 arson, you would surely have put that in your 302, would you
7 not?

8 **A.** Perhaps. I am not sure. I did not write this 302, and if
9 I took notes, I would like to see them.

10 **Q.** You were present and your name is on there with Agent
11 Halla; is that correct?

12 **A.** Yes. That's true.

13 **Q.** You testified about how you collaborated with him in
14 preparing the final serialized version of the documents, the
15 302s, right?

16 **A.** We discuss the interviews. It's a process, yes.

17 **Q.** Try to answer my question. If she had said Briana Waters,
18 that picture, that woman, that's the woman who was at the
19 arson at the University of Washington, can you possibly
20 imagine any reason you would not include that in the 302; any
21 reason whatsoever? You tell the jury.

22 **A.** I am not sure, sir.

23 **Q.** In any event, it's not in the 302, right?

24 **A.** It is not in the 302.

25 **Q.** Now, there was another interview the next day. I think

1 you were not there; is that correct? The 13th?

2 A. That's correct. I was not there.

3 Q. Now, on the 17th of January, a few days later, there was
4 another interview. Were you present for that?

5 A. I don't believe so, no.

6 Q. Okay. Now, there was another interview two or three weeks
7 after that, another interaction, I should say, between you and
8 Jennifer Kolar. That would be February 4th of 2006?

9 A. Correct.

10 Q. That was the day that you and Agent Halla and she drove to
11 Olympia from Seattle; is that correct?

12 A. Yes, sir.

13 Q. Was she shown photographs on that day?

14 A. Yes. Special Agent Halla showed her some photographs.

15 Q. Did she look at a photograph of Justin Solondz?

16 A. I would need to refer to the report.

17 MR. BLOOM: I am sorry, Pat. Could he be shown A-43
18 and A-44? Thank you.

19 BY MR. BLOOM:

20 Q. Could you please look at A-43 and A-44? Are those both
21 302s, or is one of them notes?

22 A. A-43 is a 302 and A-44 is a 302.

23 Q. Now, on that day, if you can look at page 1, I think it is
24 A-43. Was she shown a picture -- Jennifer Kolar -- shown a
25 picture of Justin Solondz? If you look at the first page of

1 picture No. 5.

2 **A.** It says No. 5, correct, Justin Solondz, and then it has
3 "no" afterwards.

4 **Q.** It says Justin Solondz. Does that mean she looked at the
5 photograph and she said I don't know that person?

6 **A.** I believe so.

7 **Q.** Now, did there come a time when there was a discussion
8 about Briana Waters on that day? That would be February 4th
9 of '06.

10 **A.** Yes.

11 **Q.** If you could look at page 2 of that document and go to the
12 bottom. She told you, did she not, that Briana was outgoing,
13 clean cut, into singing and music?

14 **A.** That's what the 302 says.

15 **Q.** It also says, "Kolar did not recall Briana and Lacey being
16 close friends"?

17 **A.** That's what the 302 says, yes.

18 **Q.** Before I get to that specific entry, am I correct that
19 during the discussion of Briana Waters, February 4th,
20 Ms. Kolar did not say Briana Waters, that's the person who was
21 involved with me in the arson at the University of Washington?
22 Did she say that?

23 **A.** I am not sure. You'd have to understand, this was in a
24 moving vehicle. I was driving. We were on I-5 when this was
25 happening. Special Agent Halla was in the passenger seat.

1 Jennifer Kolar was in the rear seat, and Special Agent Halla
2 is asking her questions. I have snapshot memories of when we
3 were driving that day, but I was trying to concentrate on
4 driving.

5 Q. Was Agent Halla taking notes?

6 A. I don't recall if he was taking notes or not.

7 Q. Do you recall if he was?

8 A. I don't recall whether -- I would be very surprised if he
9 wasn't taking notes.

10 Q. That's part of your investigative responsibilities; is
11 that correct?

12 A. Yes.

13 Q. There came a time when you arrived in the Olympia area; is
14 that correct?

15 A. Yes.

16 Q. There came a time when you were not driving; is that
17 correct?

18 A. Yes.

19 Q. At any time with her that day, any time, did she say that
20 Briana Waters was involved in the University of Washington
21 arson?

22 A. We went to the Evergreen State College in Olympia and we
23 walked out to the campus and to the library area. I believe
24 that's when she told us a preplanning meeting happened for the
25 University of Washington, and that Briana Waters had arranged

1 that room for it, because I believe she was a student there.

2 Q. Okay. I will get back to that in a moment.

3 A. Okay.

4 Q. At any time, is there any indication in your 302, or any
5 memory that you have, of her saying Briana Waters participated
6 on May 20th, 21st, in the arson at the University of
7 Washington?

8 A. Can I review the 302 before I answer that?

9 Q. Of course. Yes. What is your answer to my question?

10 A. I don't see in the 302 where it states that.

11 Q. And this is the day where she did discuss Briana Waters;
12 is that correct?

13 A. Yes.

14 Q. Did she also tell you on that day that she recalled --
15 she, Kolar -- recalled calling Lacey Phillabaum from a pay
16 phone once? You can look on page 2, right in the middle.

17 A. I see that.

18 Q. Do you recall hearing that and possibly thinking this is a
19 woman who knows how to contact anybody she wants to in a
20 clandestine way?

21 A. I don't recall that at all.

22 Q. You don't recall thinking that?

23 A. I don't recall this statement.

24 Q. It's not a statement. I am saying, she told you that she
25 called Lacey from a pay phone once; is that correct?

1 **A.** Yes. It says, "Kolar recalled calling Lacey from a pay
2 phone once."

3 **Q.** When you heard her say that, did it occur to you that this
4 is a woman given her skills and intelligence, who was able to
5 contact people in a surreptitious or clandestine way?

6 MR. BARTLETT: This is argument, Your Honor.

7 THE COURT: This is argument.

8 BY MR. BLOOM:

9 **Q.** Did she tell you that day that she regarded Lacey
10 Phillabaum as a younger version of herself?

11 **A.** Yes.

12 **Q.** Now, let's get back to the paragraph on the same page
13 where, in the 302, it says, "Kolar did not recall Briana and
14 Lacey being close friends."

15 **A.** Yes.

16 **Q.** Do you see that? She didn't actually say that, did she?

17 **A.** I don't remember her exact words. My snapshot memories of
18 this drive -- I seem -- I seem to recall this is the time when
19 we were driving back to Seattle north on I-5. I recall
20 Mr. Halla mentioning something to Ms. Kolar, asking her
21 something about the relationship of Briana Waters and Lacey
22 Phillabaum. The snapshot memory I have at the time was
23 something to the effect that they were acquaintances, not very
24 close or something, but just not perfect strangers.

25 **Q.** You see what's on the screen in front of you, right?

1 **A.** Yes.

2 **Q.** That's Exhibit A-45, which is in evidence, and it's Agent
3 Halla's notes for that day. Agent Halla took notes. Those
4 are his notes. I represent that to you.

5 **A.** Yes.

6 **Q.** His notes say that, Kolar indicated I don't remember
7 Briana and Lacey together. Is that correct? That's what his
8 notes say?

9 **A.** Those are the words on his notes.

10 **Q.** That's different from people being close friends?

11 MR. BARTLETT: Objection. First of all, they are not
12 his notes. Second of all, they already cross-examined Agent
13 Halla.

14 THE COURT: His notes have got to speak for
15 themselves.

16 MR. BLOOM: Fair enough.

17 BY MR. BLOOM:

18 **Q.** In fact, that's what Kolar told you on that day, "I don't
19 remember Briana and Lacey together"? That's what she told
20 you, isn't it?

21 **A.** You would have to ask Mr. Halla that.

22 **Q.** I am asking you, who was present.

23 **A.** I was present. I was driving. I don't remember her
24 saying, "I don't remember Briana and Lacey together." What I
25 remember is the snapshot memory, the characterization of it,

1 sir, is that they were not strangers.

2 Q. Did you and Agent Halla have a discussion about, let's not
3 put down that they were strangers, let's put down, "I don't
4 remember Briana and Lacey together"? Let's do that?

5 A. No, sir.

6 Q. That wouldn't have happened, right?

7 A. No, I don't believe it did happen.

8 Q. His notes are his notes, and he took down what he heard
9 because that's what you do when you take notes?

10 MR. BARTLETT: Objection.

11 THE COURT: It's been asked and answered. Those are
12 his notes. They say what they say.

13 BY MR. BLOOM:

14 Q. You realize it as you sit there now, if Briana and Lacey
15 were not together, they could not have been together at any
16 meetings involving the University of Washington arson. You
17 know that, right?

18 A. If it was actually true that Briana -- as these notes --
19 as I am reading the notes -- I am not reading the notes --
20 that it was actually true that Briana Waters and Lacey
21 Phillabaum were never, ever together, then I guess you could
22 come to that inference. However, I don't believe that to be
23 true or the case.

24 Q. The same is true that they couldn't have been together at
25 the Greenlake restaurant just before the arson, correct?

1 MR. BARTLETT: Objection, it's just argument.

2 THE COURT: It's going into the same thing in the
3 same way, Mr. Bloom.

4 BY MR. BLOOM:

5 Q. Now, we've talked earlier about the FBI regulations
6 requiring accuracy, right?

7 A. I believe we required -- there weren't regulations
8 requiring accuracy. That was more a common practice or
9 established practice.

10 Q. And the principal thing to do, to be accurate?

11 A. We strive to be accurate; yes, sir.

12 Q. Of course. So this handwritten note by Agent Halla that
13 was made at the time Kolar was speaking, you would
14 understand -- you would expect that to be accurate, right?

15 MR. BARTLETT: Objection, it's just argument.

16 THE COURT: It's been asked and answered and been
17 covered.

18 BY MR. BLOOM:

19 Q. Now, in this particular case, February 4th of 2006, we
20 don't have to rely on your memory or Agent Halla's memory or
21 even the notes; there's a tape recording of the conversation
22 between you and Agent Halla and Lacey Philabaum; is that
23 correct?

24 A. No.

25 Q. There's no tape recording?

1 **A.** Not between myself, Agent Halla and Ms. Phillabaum.

2 **Q.** Do you know that -- I am sorry. When I said Phillabaum, I
3 was completely wrong. I am talking about Kolar.

4 **A.** Yes, there is a recording of that.

5 **Q.** Kolar herself made a tape recording, right?

6 **A.** Yes, she did.

7 **Q.** Does the Government have a copy of the tape recording?

8 **A.** I don't believe we do.

9 **Q.** Now, she, Ms. Kolar, has agreed to fully cooperate with
10 the Government; is that correct?

11 **A.** Yes, she has.

12 **Q.** If you or Mr. Friedman or Mr. Bartlett or Agent Halla said
13 we'd like to have a copy of that tape recording, that would be
14 part of her agreement to cooperate, to turn that over; is that
15 correct?

16 **A.** I am not sure if that was asked of her.

17 **Q.** I am not saying you know one way or the other, but if she
18 were asked, it would be reasonable to believe that she would
19 be -- as part of her agreement, she would be required to turn
20 over a copy of that; is that correct?

21 **A.** I am not sure because she told us from the very beginning,
22 when she got in our vehicle, that her attorney, Michael
23 Martin, had asked her to record the events of that day.

24 **Q.** Yes.

25 **A.** So I don't know if -- I am not a lawyer. I am just

1 thinking here, is it attorney/client privilege, that she even
2 has the authority to hand that over, or if that's Mr. Martin's
3 authority to hand that over.

4 MR. BLOOM: Judge Burgess, could you please instruct
5 the jury, with regard to attorney/client privilege, that if
6 there's a conversation between people, not the attorney, that
7 is not subject to attorney/client privilege. Could you please
8 give the jury an instruction on that?

9 THE COURT: I don't know if I should instruct them on
10 anything at this point. He's answering your questions. So I
11 will let it go at that. If there is something else I should
12 add to that, I will do that and I will hear you out at the
13 break. Right now, I want you to get into the questions. You
14 are asking him the questions and I guess you want him to
15 respond?

16 MR. BLOOM: Yes.

17 BY MR. BLOOM:

18 Q. You know very well, if it's a conversation between the
19 attorney and the client, then that may be an attorney/client
20 privilege.

21 If it's a conversation involving any other person, there's
22 no privilege. You know that? That's basic stuff?

23 A. Maybe so. What I am saying is, I don't know if the report
24 belongs to her or if the recording belongs to her attorney.
25 But that's what I am saying.

1 Q. To whomever the recording belongs, that recording will
2 tell this jury, if we had it, whether or not she said "I don't
3 remember Briana and Lacey together." That would be on there,
4 would it not?

5 A. That recording should reflect the words that she spoke on
6 that day.

7 Q. Can I ask you to do your best to try to get that recording
8 for us?

9 A. No, sir. That's not my responsibility. That's not my
10 job.

11 MR. BLOOM: Could I ask the Court to ask the
12 prosecution?

13 MR. BARTLETT: Objection, Your Honor.

14 THE COURT: That's a bad question. Ask the next
15 question about what you want to know about this case.

16 BY MR. BLOOM:

17 Q. Now, on March 6th, about a month later, was there another
18 interview of Kolar at which you were present?

19 A. Yes.

20 Q. Now, that was the first time, am I correct, that she said
21 that Briana Waters was involved in this incident. First time
22 she said to you?

23 A. I believe that's the first time Ms. Kolar told that to me
24 directly.

25 Q. Okay. And you understood that she had told that to her

1 lawyer, who had communicated that on January 5 of 2006, to
2 Mr. Friedman?

3 **A.** That's my understanding.

4 **Q.** From January 5th, exactly two months later -- I am sorry,
5 March 6th -- there had been no indication from Ms. Kolar that
6 that was true, no statement whatsoever that Briana Waters was
7 involved in the arson; is that correct?

8 **A.** Can you repeat that question?

9 **Q.** Right. Between January 5th -- I am sorry, January 5th,
10 the day that Mr. Martin supposedly told Mr. Friedman what his
11 client had quote remembered, two months, she did not say a
12 single word to you in your presence or in any of the
13 interviews, about seven interviews, that Briana Waters was
14 involved in the incident; is that correct?

15 **A.** It is my understanding that the following day there was an
16 interview of Ms. Kolar in which she identified Briana Waters.
17 I believe that was on the 6th.

18 **Q.** Identified her as a person whose picture she remembered,
19 she recognized?

20 **A.** I believe that's correct.

21 **Q.** Did she identify her on that day, or any day between
22 January 5th and March 6th, as being a person who was involved
23 in the arson?

24 **A.** On the January 12th -- let me correct that. On the
25 February 4th drive to Olympia, she identified, I believe,

1 Briana Waters as being responsible for getting -- I would have
2 to review the notes -- of being at or responsible for getting
3 the room at the Evergreen State College. I believe that's
4 true.

5 Q. At that time, did she then say: And then she went on to
6 be involved in the arson? Did she say that?

7 A. That is involvement in the arson. It's pre-planning for
8 the arson.

9 Q. Did she say then on May 20th, 21st, she was involved in
10 the arson? Did she say that?

11 A. I don't believe she said that.

12 Q. So this was involved in getting a room in a public place,
13 a building in a room at Evergreen State College. They were
14 going to have a meeting there, is that your position?

15 MR. BARTLETT: Objection, Your Honor, argumentative.

16 THE COURT: Let him answer.

17 BY MR. BLOOM:

18 Q. Is that your testimony?

19 A. Can you repeat the question?

20 Q. Yes. Getting a room in a public place where people could
21 be seen, that had something to do with an arson?

22 A. Getting a room?

23 Q. Yes.

24 A. To discuss the planning of an arson, whether it be in a
25 private or public place, in a closed room, is very

1 signi fi cant.

2 Q. A closed room?

3 A. Well, a room. From what I understand, it was a room,
4 almost a study room.

5 Q. Yes.

6 A. With a closed door.

7 Q. Yes.

8 A. If they are in there talking about particulars of an arson
9 and how to conduct an arson or pre-planning or logistics,
10 that's very signi fi cant.

11 Q. When you get to that room, you get to that room by being
12 on the campus of the University, right, where you can be seen?

13 A. Yes.

14 Q. And in the building where you can be seen?

15 A. Yes.

16 Q. Now, there are, are there not, eight zillion secluded
17 places -- excuse me, eight zillion secluded places all over
18 the Northwest?

19 MR. BARTLETT: It's just argument, Your Honor.

20 THE COURT: That's argumentative as to what was going
21 on in the meeting, I guess, as well as can you go there for
22 any innocent purpose. That's argument.

23 BY MR. BLOOM:

24 Q. You say it's signi fi cant?

25 A. I think it is very signi fi cant. There's more privacy

1 there than at the Greenlake Bar & Grill a few hours before the
2 arson when they all get together to discuss it.

3 Q. Is there more privacy there than in the woods?

4 A. Where than in the woods?

5 Q. In a room at the University -- at Evergreen State
6 University? Is there more privacy there in a building where
7 you can be seen going in and out than there is in the woods?

8 A. I don't know. It depends on the woods. Is it a
9 campground in the woods? Is it 10 miles into the woods? I
10 can't answer that.

11 Q. How about in a car? How about just in a car?

12 MR. BARTLETT: Objection, Your Honor. This isn't
13 cross. This is direct examination.

14 THE COURT: This is beginning to get argumentative
15 here. Let's move on to the next question.

16 BY MR. BLOOM:

17 Q. You said it's significant that there was a room arranged
18 for some kind of meeting. You said it was significant?

19 A. Yes.

20 Q. It's significant because you want the jury to believe
21 there was some arson discussed; is that correct? Is that what
22 you are saying?

23 A. That's what I am saying.

24 Q. I am asking you questions about whether or not an
25 unlimited number of more secluded, private places where nobody

1 would be seen, if indeed that happened and if indeed that were
2 the subject matter --

3 **A.** Perhaps. Someone's house would be more secure.

4 **Q.** And someone's car would be more secure, right?

5 **A.** Perhaps.

6 **Q.** And the woods would be more secure, right?

7 **A.** It depends.

8 **Q.** Depends on what?

9 **A.** The environment of the woods. I mean, when you say the
10 woods, I don't know.

11 THE COURT: I think that's been asked and answered.
12 You made your point.

13 BY MR. BLOOM:

14 **Q.** Now, on March 6th, did Jennifer Kolar tell you -- I don't
15 know what exhibit it is that Mr. Fox -- March 6th, the 302.

16 MR. FOX: A-50.

17 BY MR. BLOOM:

18 **Q.** Do you have A-50 in front of you? If you can look at that
19 document. Is that the 302 that reflects what happens in your
20 presence, in an interview with Jennifer Kolar on March 6th of
21 '06?

22 **A.** Yes.

23 **Q.** Would you look at the top of page 3? Did Jennifer Kolar
24 tell you on that date, March 6th of '06, that she believes
25 that Avalon may have arranged the rental car?

1 A. It says, "Kolar believes Avalon may have arranged the
2 rental car."

3 Q. That's just what I asked. Did she tell you that?

4 A. Yes.

5 Q. She didn't say Briana Waters arranged the rental car, did
6 she?

7 A. I don't see that as reflected in this 302.

8 Q. Well, this is the first time that she's claiming that
9 Briana Waters was involved in the arson; is that correct?

10 A. No, I believe she said in an earlier interview on January
11 6th, that I thought she was involved, but I wasn't there. I
12 would have to clarify that.

13 Q. You take a look at any document you want, and you let us
14 know where she says on January 6th or any date before March
15 6th --

16 A. I said --

17 Q. You take a look. You tell us. Tell this jury where she
18 said that.

19 A. I said I believe. I wasn't sure.

20 Q. Take a look at anything you want to refresh your
21 recollection. Take a look at January 6th, January 7th, 8th,
22 9th, 10th, 11th, 12th, any day, and you tell the jury where
23 she said that before March 6th.

24 A. Before March 6th.

25 Q. Before March 6th, that's right.

1 **A.** Can you refresh my memory as to the January 6th, 302?

2 **Q.** You mean what number it is?

3 **A.** Yes.

4 **Q.** A-30.

5 MR. BARTLETT: Your Honor, I also ask the witness be
6 provided the stipulation regarding Mr. Martin's phone call to
7 the Government.

8 THE COURT: I will have you do that when you get a
9 chance to question him.

10 BY MR. BLOOM:

11 **Q.** While you are looking, you were not there on that day,
12 January 6th?

13 **A.** I was not.

14 **Q.** You are looking to see if it refreshes your recollection,
15 correct?

16 **A.** Correct.

17 **Q.** About what she had said not in your presence?

18 **A.** Yes.

19 **Q.** Please keep looking.

20 **A.** The only reference that I can see is on the first
21 paragraph where it says Briana, a phone number and a Hotmail
22 account.

23 **Q.** First page?

24 **A.** First page, yes.

25 **Q.** There was some handwritten notes located on the back of a

1 newsletter that had Briana, her phone number and her e-mail
2 address; is that correct?

3 **A.** Yes.

4 **Q.** Okay. After that, does it say anything to indicate she
5 then said that that woman was involved in the arson? Did it
6 say anything, any of the 10 pages you've looked at?

7 **A.** I don't see that.

8 **Q.** So is there any other document you want to look at to see
9 if she said anything else about Briana Waters being involved
10 in the incident prior to March 6th?

11 **A.** No.

12 **Q.** You are satisfied that you won't find anything, right?

13 **A.** I believe so.

14 **Q.** In fact, in that period, over the course of those seven
15 meetings, Briana Waters' name did come up and she did not say,
16 that's the woman who was with me on May 20th and May 21st?

17 **A.** Her name did come up, and I don't recall if those exact
18 words were spoken.

19 **Q.** Or words anything like that, that she was with me at the
20 Greenlake, she was with me at the arson, she was with me in
21 the van, she was with me anywhere on May 20th and 21st?

22 She did not say that even once, before March 6th; is that
23 correct?

24 **A.** I don't believe so.

25 **Q.** Going back to March 6th, did she say -- page 3, for your

1 reference, at the bottom -- did Kolar tell you on that day
2 that she recalled no significant events that happened en route
3 from the arson to her vehicle?

4 **A.** The 302 states, "Kolar recalls no significant events
5 happened en route to her vehicle."

6 **Q.** She didn't report to you that something huge happened,
7 right?

8 **A.** No.

9 **Q.** She didn't report to you that the car or van had an
10 accident, did she?

11 **A.** I don't believe so.

12 **Q.** That would be an event of significance, would it not?

13 **A.** It depends on how significant the accident was.

14 **Q.** Indeed, in the get-away, whoever did that crime, the
15 get-away from the scene to their escape, if there were an
16 accident, whether it's a small accident or a big accident,
17 that would or would not be an event of significance?

18 **A.** Again, it depends on how significant an accident. Depends
19 on how we are defining accident. If it's a scrape or if it's
20 a big crash, it depends on how significant that is.

21 **Q.** Well, if it was an escape that Lacey Philabaum described
22 as seeming huge, that would be a significant event, wouldn't
23 it?

24 **A.** I think if it was -- well, to different people it varies
25 in significance.

1 Q. How about people getting away from an arson?

2 A. You'd have to ask the people getting away from the arson.

3 Q. I am asking you what one of those people said to you about
4 whether or not there was any significant event that happened
5 in the get-away from the arson to taking her to her car?

6 A. If you are referring to what Ms. Kolar said --

7 Q. I am.

8 A. Okay. In her 302 it says, "Kolar recalls no significant
9 events happening en route to the vehicle."

10 Q. Did she also tell you on March 6th that she went to her
11 boyfriend's, Jonathan Reichhold's, and spent the night?

12 A. Yes.

13 Q. Did she also tell you that the following day when the news
14 reports of this arson came out, that her boyfriend Jonathan
15 gave her a peculiar look?

16 A. Yes.

17 Q. You came to learn from that that she was deceiving her
18 boyfriend; is that correct?

19 A. It just says she didn't say anything. I don't know if
20 that's deception or not.

21 Q. She'd just committed an arson, you know that.

22 MR. BARTLETT: Objection, Your Honor, this is
23 argument.

24 THE COURT: I think it is argumentative.

25 BY MR. BLOOM:

1 Q. Did you come to the conclusion, when you heard her say
2 that, this is a woman who would go so far as to deceive her
3 live-in boyfriend?

4 MR. BARTLETT: Objection, Your Honor, argumentative.

5 MR. BLOOM: I am asking what conclusion he came to.

6 THE COURT: That's why it's argumentative. You will
7 draw the conclusion when you argue the case.

8 BY MR. BLOOM:

9 Q. Let's leave Jennifer Kolar for now and let's talk about
10 Lacey Philabaum.

11 When was the first time you spoke to her?

12 A. I believe it was February 21st.

13 Q. And where was that?

14 A. At the United States Attorney's Office in Seattle.

15 Q. Would that have been with Mr. Friedman?

16 A. Yes.

17 Q. And Agent Halla?

18 A. Yes.

19 Q. Was Mr. Bartlett present?

20 A. I don't recall if Mr. Bartlett was present or not. I
21 would have to review the 302.

22 Q. Would you take a look at Exhibits A-113 and A-114?

23 A-114 is your notes and A-113 is a 302.

24 A. For the February 21st, it was at the United States
25 Attorney's Office in Seattle. Mr. Bartlett and Mr. Friedman

1 and Mr. Offenbecher were present. Ms. Phillabaum came, myself
2 and Agent Halla.

3 Q. And you are reading from the 302?

4 A. I am reading from the 302.

5 Q. Okay. Now, Mr. Offenbecher was her lawyer?

6 A. Was Ms. Phillabaum's attorney, yes.

7 Q. I am talking now about Phillabaum.

8 A. Yes.

9 Q. How long was that interview?

10 A. I don't recall how long that interview was.

11 Q. Was it 10 minutes, an hour, two hours?

12 A. It was probably -- I don't know for sure. I would suspect
13 an hour, two hours.

14 Q. You were there. I am asking you to call upon your memory
15 of the first conversation with Lacey Phillabaum. About how
16 long was it?

17 A. I don't know, sir. Maybe an hour, maybe two. I don't
18 recall.

19 Q. Is it fair to say that you don't know unless you were able
20 to look at your documents, which you can do? You don't have
21 an independent recollection of how long it was?

22 A. I don't have an independent recollection of exactly how
23 long that meeting was.

24 Q. Had you spoken with Mr. Offenbecher before that date about
25 these events?

1 A. About these events? No.

2 Q. Had you spoken with him about other events?

3 A. Yes. While investigating drug cases when I was previously
4 assigned to the organized drug crime squad for the FBI,
5 Mr. Offenbecher defended one or two clients or suspects.

6 Q. Had you spoken with Lacey Phyllabaum any time prior to
7 February 21st?

8 A. I don't believe so, no.

9 Q. You took notes, is that correct, on the 21st of February?

10 A. I took a few notes, yes.

11 Q. You say you took a few notes. I notice there's only three
12 pages.

13 A. I have two pages.

14 Q. Two pages? Did that cover the entire interview?

15 A. No, it did not.

16 Q. Did you stop taking notes at some point?

17 A. I believe I stopped taking notes at some point.

18 Q. Why did you do that?

19 A. Well, possibly to avoid confusion of what happened on the
20 December 16th interview.

21 Q. You say to avoid confusion. You say it was confusion.
22 And whatever it was, there was a problem with the December
23 16th interview with the other witness, Kolar, right?

24 A. There was confusion.

25 Q. So you stopped taking notes?

1 A. That's my recollection. There's only two pages of notes
2 here. What I could surmise is when we got to the majority of
3 the substance of her interview, I relied on Agent Halla to
4 take the rest of the notes. So if we can review Mr. Halla's
5 notes, then I would suspect they are substantially longer than
6 my notes.

7 | **Q.** So for the important stuff, you decided not to take notes?

8 A. Well, no, I am not saying for the important stuff, the
9 substantive facts she was telling us. To avoid the confusion
10 of what happened with Ms. Kolar's interview on December 16th,
11 I am surmising that I probably felt that it was best that I
12 stopped taking notes.

13 Q. Is that contrary to FBI regulations?

14 **A.** I don't think our regulations state either way.

15 Q. Now, in fact, you had spoken with Lacey Phillabaum prior
16 to that date; is that not correct?

17 | **A.** Prior to the 21st?

18 | Q. Yes.

19 | **A.** I spoke to her?

20	Q. Yes.
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21 | **A.** I don't know if I did or not, sir.

22 | MR. BLOOM: I would like to move A-114 into evidence.

23 MR. BARTLETT: No objection.

24 THE COURT: Admitted.

25 (Exhibit No. A-114 admitted.)

1 BY MR. BLOOM:

2 Q. This is the first page of your notes, Exhibit A-114.

3 A. 114?

4 Q. Yes.

5 A. Yes.

6 Q. Is that the way they began, with your writing "meeting
7 with Lacey, Peter, Ted, Mark, Andrew"?

8 A. That's the beginning of that page. That's what it says.

9 Q. You refer to her as Lacey, right?

10 A. In my notes, I did.

11 Q. Yes. In your notes, you did?

12 A. Yes.

13 Q. You wrote down Lacey?

14 A. Yes.

15 Q. You knew her from before, didn't you; before that date,
16 didn't you?

17 A. No, I did not.

18 Q. Your reference to her as Lacey indicates a familiarity
19 with her, does it not?

20 MR. BARTLETT: Objection, Your Honor, this is just
21 argument.

22 MR. BLOOM: It is not just argument. I don't
23 understand what's going on here. I am allowed to ask him
24 questions about what he wrote.

25 THE COURT: Mr. Bloom -- answer the question, if you

1 know the answer whether that meant you are familiar with her
2 or not.

3 A. That's not what that means.

4 BY MR. BLOOM:

5 Q. You went through -- who questioned her?

6 A. Who was asking the questions?

7 Q. Yes.

8 A. I don't recall.

9 Q. Whoever was asking the questions, it would likely have
10 been one or both of the prosecutors, is that correct? As you
11 were not -- or was it you and/or Agent Halla as well?

12 A. I don't recall who was asking the questions, sir.

13 Q. Is there anything that would refresh your recollection as
14 to who was asking the questions?

15 A. I don't know.

16 Q. Did you understand that she was perhaps going to confess
17 to one or more crimes?

18 A. I was not sure what she was going -- it wasn't a
19 confession, it was a proffer, so I am not sure exactly what
20 she was going to tell us in that meeting.

21 Q. Even though you were not sure, did you understand from
22 Pete, her lawyer, that there was going to be an agreement to
23 cooperate and to talk to you about what she had done?

24 A. That's my understanding, that she was coming in to
25 cooperate. At what level or to what extent, I am not sure,

1 but that was my understanding.

2 Q. Did you ask the Special Agent in charge of the FBI office
3 in Seattle -- did you say there could be a confession here, I
4 would like to tape-record it?

5 A. It was not a confession, it was a proffer.

6 Q. Did you understand there might be a confession that day?

7 A. No, it was a proffer. It wasn't a confession. I didn't
8 know what she was going to tell us.

9 Q. I am asking you this: It was a proffer from whom to whom?

10 A. What do you mean from whom to whom?

11 Q. What is a proffer?

12 A. A proffer, as I explained yesterday, is a one-sided
13 interview where someone whom we suspect of committing a crime
14 is going to come in and tell us what she knows about the
15 particular crime she may have been involved with.

16 Q. So you understood that this proffer which comes from the
17 Government -- I am sorry, does the proffer come from the
18 Government or from the witness?

19 A. I believe the proffer comes from the Government -- it's a
20 Government form.

21 Q. So the proffer was from the Government, and did you
22 understand that it could well be in response to that proffer
23 that she was going to confess to one or more crimes?

24 A. I didn't know exactly what she was going to tell us prior
25 to that proffer.

1 Q. Say again?

2 A. I didn't know exactly what she was going to tell us prior
3 to that proffer. Again, as I explained yesterday, in
4 11-and-a-half years, I have never recorded a conversation, a
5 proffer, a confession, an interview, nor am I aware of anyone
6 else in that office who has.

7 Q. Now, try to answer my question. You understood that in
8 response to that proffer, she might well be confessing to one
9 or more crimes? That's my question.

10 A. She may be accepting responsibility or giving us
11 information regarding her involvement in crimes, yes.

12 Q. Would you call that a confession?

13 A. I don't know if I would call it a confession. A proffer
14 isn't a confession.

15 Q. The proffer comes from the Government. I am talking about
16 what comes from her to you.

17 MR. BARTLETT: Objection, Your Honor, argumentative.
18 In fact, it's misleading to the jury.

19 MR. BLOOM: Excuse me. You know --

20 THE COURT: There's an objection, and he has a right
21 to raise an objection, but I think you are going over and
22 over.

23 MR. BLOOM: I am not going over and over.

24 THE COURT: Let's accept an answer when he gives you
25 an answer, without going into any other part of it.

1 MR. BARTLETT: If we could take our morning break, I
2 would like to be heard outside the presence of the jury on
3 this matter.

4 THE COURT: All right. Let me have you take your
5 morning break. Don't discuss the case. Leave your books on
6 your chair.

7 (Jury not present.)

8 THE COURT: Same admonition. Let me have you step
9 out of the room.

10 THE WITNESS: Yes.

11 (Witness departed courtroom.)

12 MR. BARTLETT: Your Honor.

13 THE COURT: All right. Let me hear your objection.

14 MR. BARTLETT: The reason these questions and answers
15 are misleading to the proffer session -- is there going to be
16 a confession in the proffer letter -- which we'll introduce on
17 redirect -- paragraph 4 says no direct use -- the Government
18 agrees statements and information contained in your client's
19 proffer may not be used in the Government's case-in-chief
20 against your client should your client be held for trial.

21 So it isn't a confession. It's a proffer. It's confusing
22 for the jury to have Mr. Bloom continually go over this
23 activity. He has a copy of the letter. He knows it's not a
24 confession. It's a different breed of cat.

25 It's just misleading, besides the fact that all of the

1 questions are improper given that it's direct examination of a
2 witness he called.

3 MR. BLOOM: I can't imagine that this can be possibly
4 objectionable. The point of my question is, you understood
5 that she was going to perhaps, or very likely, tell you of her
6 involvement in a crime.

7 Next question, is there a reason you didn't get in touch
8 with the Special Agent in charge and say you might get a
9 confession here, or a statement admitting to the facts of the
10 crime; I think it's something we should tape.

11 It's as simple as that. I am allowed to ask him whether
12 he did that, yes or no.

13 MR. BARTLETT: I have no objection if that in fact
14 had been the question. If the question had been, did you
15 understand that there was going to be a statement that
16 couldn't be used directly against her during a trial, but
17 could have been used indirectly.

18 That's actually the description of what was going on. As
19 a result of that, did you ask to tape it. There's nothing
20 wrong with that.

21 His problem is that he continually calls it a confession.
22 By its definition, a proffer session is not a confession.

23 THE COURT: Is there any confusion as to the proffer
24 and a confession?

25 MR. BLOOM: No, the confusion is this.

1 THE COURT: I understand, but I am trying to ask you
2 a question and maybe I can get you to answer my question.

3 MR. BLOOM: Sure.

4 THE COURT: In your mind, is there any difference
5 between a confession and a proffer session? If you really
6 want to know why they didn't -- would they have been better
7 off if they had taped it, you've asked that question many
8 times, and the answer keeps coming up no, we didn't tape it.
9 We don't do that.

10 Then it becomes argumentative. Well, they would have been
11 better off if they had taped it, then we wouldn't have this
12 confusion, but that's argument. That's what I mean by asking
13 the same question over and over and getting the same answer.

14 MR. BLOOM: I talked about that with regard to the
15 other witness. I am through with that. I am now asking with
16 regard to this witness. She was there on February 21st with
17 an expectation or even the possibility that she was going to
18 say what she did, whether you call it a confession, a sugar
19 pop, I don't care what you call it. If she was going to say
20 something about yes, I did that crime, why isn't that on tape?
21 Why didn't they make efforts?

22 THE COURT: You can ask that question in that way,
23 but you are going into explaining a proffer and what it is and
24 what's the difference.

25 MR. BLOOM: No, I am not. He's doing that. He's

1 standing up and talking about proffers.

2 THE COURT: Mr. Bloom, let me rule this way. Ask the
3 question whether or not they taped it or had the opportunity
4 to tape it and why they didn't tape it and get your answer.

5 MR. BLOOM: That's all I want to do, and I keep
6 getting interrupted.

7 THE COURT: Let's do this. Let's take the morning
8 recess.

9 MR. BARTLETT: Thank you, Your Honor.

10 THE CLERK: All rise. Court is in recess.

11 (Morning recess.)

12 THE COURT: You may be seated.

13 Bring them in.

14 (Jury present.)

15 THE COURT: All right. You may be seated.

16 MR. BLOOM: Yes, sir.

17 THE COURT: Mr. Bloom.

18 BY MR. BLOOM:

19 Q. Agent Torres, during this recess, did you have occasion to
20 speak with Mr. Bartlett?

21 A. I did.

22 Q. About how many different times did you speak with him in
23 these 20 minutes or so?

24 A. Two or three different times.

25 Q. At times did he show you documents?

1 **A.** He di d.

2 **Q.** Di d you di scuss your testimony or were you tal king about
3 the Mari ners or the Red Sox?

4 **A.** I defi ni tely woul dn' t tal k about basebal l. We tal ked
5 about how things were going in general , not the substance of
6 my testimony, how things were going in general . I believe he
7 showed me a 302, which I was present at.

8 **Q.** In general , he showed you a document relating to thi s
9 case, ri ght?

10 **A.** Agent -- I reviewed -- he asked me if I was involved in an
11 interview on March 21st, and I was.

12 **Q.** That was just now, just before the jury came in?

13 **A.** That' s correct.

14 **Q.** Before that, about three minutes before that, you were
15 standing right near the edge of the jury box and he came over
16 to you, ri ght?

17 **A.** That' s correct.

18 **Q.** Di d he say something to you, just yes or no?

19 **A.** Yes.

20 **Q.** About thi s case?

21 **A.** It had to do wi th the case, yes.

22 **Q.** About your testimony?

23 **A.** Not necessari ly about my testimony, about the case.

24 **Q.** Prior to that, di d you have a di scussi on wi th hi m at the
25 desk area?

1 **A.** I believe so.

2 **Q.** Now, we were talking about Lacey Philabaum, February
3 21st, the interview at the U.S. Attorney's Office.

4 Now, I think you were describing that as a proffer
5 session?

6 **A.** Correct.

7 **Q.** Am I correct that the proffer is a document that's
8 prepared by the Government and provided to the witness and her
9 lawyer?

10 **A.** Correct.

11 **Q.** Here's my question: Did you expect at that time that it
12 would well be that she was going to admit to her participation
13 in one or more crimes?

14 **A.** Yes.

15 **Q.** Did you make any effort to speak to a Special Agent in
16 charge to get permission to tape-record what might be an
17 admission to crimes?

18 **A.** I would never have done that.

19 **Q.** The answer is no, you didn't do it; is that correct?

20 **A.** That's correct.

21 **Q.** There are provisions, am I not correct, in the FBI
22 regulations that prescribe just how you do that if you want to
23 do it?

24 MR. BARTLETT: Objection, we've gone over this
25 several times.

1 MR. BLOOM: We've gone over it with regard to the
2 other witness.

3 THE COURT: Answer the question.

4 **A.** What's the question?

5 BY MR. BLOOM:

6 **Q.** There are provisions in the FBI regulations, and I think
7 we particularly referred to Exhibit A-213, that provide how it
8 is done if you want to do it.

9 **A.** That's correct.

10 **Q.** It's there, and it's covered in the regulations, right?

11 **A.** Yes.

12 **Q.** Just one last question on that. The reason you might want
13 to have a tape recording is so there would not be any
14 confusion about what the person said; is that correct?

15 **A.** That would be the result of a recording that her or his
16 exact words would be recorded.

17 **Q.** You talked about confusion with the other witness, Kolar,
18 on December 16th. Having already had that experience, did you
19 not think it was a good idea to tape-record this one and there
20 won't be any confusion?

21 **A.** It never even crossed my mind.

22 **Q.** Because you don't want to create a tape recording with
23 which the person can be impeached later on if there's a trial
24 and she testifies. That's really what is going on, isn't it?

25 **A.** Because it's the FBI's policy not to record interviews,

1 confession, proffer. I haven't done one in 11-and-a-half
2 years, nor have I known anyone to.

3 Q. It's the FBI's policy so the defense witness can't nail
4 your witness?

5 THE COURT: It's argumentative, Counsel.

6 BY MR. BLOOM:

7 Q. Now, you came to learn on February 21st, or sometime
8 before February 21st, of the personal history of Lacey
9 Phillabaum; is that correct?

10 A. I don't think it was before February 21st, but I believe
11 it was on that day.

12 Q. You came to learn that she was a smart person, graduated
13 from college in three years, with honors?

14 THE COURT: Hasn't that been asked and answered?

15 MR. BARTLETT: It's improper. It's hearsay from this
16 witness.

17 THE COURT: The witness answered. Do you want him to
18 say that again? Say it again.

19 A. Yes, sir. I did come to learn that she was an educated
20 person, yes.

21 BY MR. BLOOM:

22 Q. You learned she was involved in ski racing; is that
23 correct?

24 A. I have some recollection of that, yes.

25 Q. She didn't have a yacht, right?

1 A. I don't know. I don't think so.

2 Q. Did she tell you on February 21st -- feel free to look at
3 Exhibit A-113 if you need to refresh your recollection -- did
4 she tell you that she went with Chelsea Gerlach and Stan
5 Meyerhoff on some date?

6 A. Prior to the arson?

7 Q. Yes. If you look at the first page of the 302, toward the
8 bottom.

9 A. Yes. It says while working at EFJ, which stands for Earth
10 First Journal, Phillabaum met Chelsea Gerlach and Stanislas
11 Meyerhoff.

12 Q. Did she volunteer to you that the she, Lacey Phillabaum,
13 may have felt competitive with Gerlach?

14 A. No, I don't recall that at all.

15 Q. Take a look at the next to last line.

16 A. Oh, that's what it says, but I don't recall that. It says
17 "Phillabaum noted she may have felt competitive with Gerlach."
18 That's the first time that refreshes my memory.

19 Q. And the competitive was about that she, Phillabaum,
20 eventually became involved with Gerlach's boyfriend,
21 Meyerhoff?

22 A. Perhaps. Again, I don't recall the nature of the
23 competitiveness, but I don't know. If you have something that
24 can refresh my memory.

25 Q. Well, does this refresh your memory where you have put in

1 your 302 that Phillabaum noted she may have felt competitive
2 with Gerlach? Does that refresh your memory about what it's
3 about?

4 A. It does.

5 Q. What was it about?

6 A. What was what about?

7 Q. The reason she was competitive.

8 A. I am not sure the reason why she was competitive. I have
9 come to learn that Lacey Phillabaum has become involved or
10 dated Meyerhoff.

11 Q. Stan Meyerhoff?

12 A. Yes. Yes.

13 Q. And that had been Chelsea's boyfriend, right?

14 A. Well, yes.

15 Q. Did you come to learn that in 1999 Lacey Phillabaum had
16 traveled to Europe for six months? If you look at page 2.

17 MR. BARTLETT: Objection, Your Honor, simply
18 irrelevant from this witness.

19 THE COURT: I agree. Next question.

20 BY MR. BLOOM:

21 Q. Did she tell you about her participation at the WTO
22 demonstrations in the year 1999?

23 A. She did.

24 Q. Did she tell you that her role was to help with sleeping
25 arrangements?

1 **A.** I believe that's correct, yes.

2 **Q.** Did she tell you on that day, February 21st of '06, words
3 to the effect that there's nothing in the world like running
4 with a group of 200 people, all wearing black, and realizing
5 each of you is anonymous, each of you can liberate your
6 desires, each of you can make a difference right there,
7 because everyone has your back, everyone is there together,
8 everyone is there for the same reason? And then to do that in
9 the middle of, you know, the most intense police presence in
10 downtown Seattle, they did that despite the cops being there
11 and they did it under the watching gaze of the cops because it
12 couldn't be stopped.

13 Did she tell you anything like that on February 21?

14 **A.** Where are you reading that from, sir?

15 **Q.** I am reading it from another document.

16 **A.** I don't recall that.

17 **Q.** In fact, she did not tell you, other than she helped with
18 sleeping arrangements, she didn't tell you anything other than
19 that about her participation in those events?

20 **A.** She told us she helped with sleeping arrangements, and I
21 believe that is all.

22 **Q.** Did she tell you on that date, February 21st, that she had
23 a job at the Cville, meaning Charlottesville, Virginia,
24 Weekly, I think it's called. Did she tell you it didn't work
25 out?

1 **A.** Are you reading that from this 302, sir?

2 **Q.** I am not sure if it's there or not. Did she tell you
3 anything like that either on that day or any other day?

4 **A.** I vaguely remember something like that. I don't know.

5 **Q.** Did she tell you that in fact it didn't work out because
6 she went to an interview when she was drunk?

7 MR. BARTLETT: Objection, Your Honor. He has no
8 knowledge of this. The witness didn't testify with regard to
9 that.

10 BY MR. BLOOM:

11 **Q.** Did she tell you? That is my question.

12 **A.** No. I see in this paragraph where it says she took a job
13 with the Cville Weekly. This job did not work out and
14 Phillabaum was fired in May of 2005.

15 **Q.** What page are you reading from?

16 **A.** Page 3.

17 **Q.** She didn't tell you anything about either being drunk or
18 accused of being drunk; is that correct?

19 **A.** That's correct.

20 **Q.** She did tell you on that day, February 21st, that there
21 were five book club meetings and that Briana -- she was at all
22 of them and Briana was not at any of them?

23 **A.** Well, I need to -- she said there was five meetings,
24 Eugene, Oregon -- first meeting, March 2000 in Eugene, Oregon
25 at a hotel. It says Phillabaum recalled the following persons

1 at this meeting: Lacey Phillabaum, Avalon, Jeff Hogg, Spring,
2 Al Decker and Ragweed.

3 Second meeting occurred at Tucson, Arizona. She recalled
4 the following persons: Lacey Phillabaum, herself, Rod
5 Coronado, Jeff Hogg, Hazel, Avalon, Chelsea Gerlach, Daniel
6 McGowan, Spring.

7 She recalled two guys from Santa Cruz, names unknown,
8 being at the meeting. Santa Cruz, this meeting occurred in a
9 hotel. She recalled the following persons at this meeting:
10 Lacey Phillabaum, Avalon, Stanislas Meyerhoff, Jeff Hogg,
11 Hazel, Chelsea Gerlach, Diver, The Mupins.

12 Olympia, no details were discussed during the Olympia
13 meeting due to time constraints.

14 Sisters, Oregon, she recalls that this meeting occurred
15 shortly after the University of Washington arson and she did
16 not elaborate further.

17 **Q.** Did she at any time identify or say in any way that Briana
18 Waters was in any of those, either book club meetings or
19 incubator meetings?

20 **A.** Briana Waters is not listed in any of those names.

21 **Q.** Now, did the discussion then turn to the University of
22 Washington arson? If you look at page 5 of the document.

23 **A.** Yes.

24 **Q.** Did she tell you -- looking on page 6, that is Lacey
25 Phillabaum -- did she tell you that she was dropped off at a

1 Denny's or a Perkins restaurant in Olympia, Washington?

2 **A.** On page 6, it says Phillabaum was dropped off at a Denny's
3 or Perkins restaurant in Olympia, Washington.

4 **Q.** I would just ask you, rather than reading, if you would
5 read to yourself unless and until this is in evidence. I am
6 just asking you to use it to refresh your recollection.

7 Does it refresh your recollection that she said to you and
8 the other people in the conference room of the U.S. Attorney's
9 Office, that she was dropped off at a Denny's or Perkins
10 restaurant in Olympia, Washington?

11 **A.** Yes.

12 **Q.** Then did she at some point, right after she told you that,
13 volunteer to you that she recalled that Briana and Connor had
14 recently broken up?

15 **A.** Yes.

16 **Q.** You didn't ask her that, did you?

17 **A.** No recall how that was asked.

18 **Q.** You wouldn't have asked that, she volunteered that, just
19 as she had volunteered that Chelsea Gerlach and Stan Meyerhoff
20 were at the end of their relationship?

21 **A.** I don't know if she was asked or if she volunteered it.

22 **Q.** This was having heard about the competitiveness of Chelsea
23 Gerlach --

24 MR. BARTLETT: Objection, this is just argumentative.

25 BY MR. BLOOM:

1 Q. Having heard about the competitiveness with Chelsea
2 Gerlach that came from the words of Lacey Phillabaum, and the
3 statement here that Briana and Connor had recently broken up,
4 did it occur to you that this is a woman who gets involved
5 with other women's men?

6 A. No.

7 Q. Now, did she say on that day, February 21st, that the plan
8 for the arson was laid out by Avalon?

9 A. Yes.

10 Q. Did she tell you that she wasn't sure that Kolar was
11 there?

12 A. Diver -- who we've come to know is Kolar -- says it was at
13 one of the meetings that weekend but Phillabaum does not
14 recall which one.

15 Q. Do you remember her telling you, she's not sure if Kolar
16 was there at the meeting where the plan was laid out by
17 Avalon?

18 A. That's what she says. She does not recall which one.

19 Q. Now, you've seen a manual how to do these arsons that was
20 written, as you understand it, by Rodgers and Meyerhoff; is
21 that correct?

22 A. I have seen parts of it.

23 Q. Are there parts of it that say everybody has to be
24 together at all the meetings and the planning --

25 MR. BARTLETT: Objection, Your Honor.

1 THE COURT: Let me hear the question, then I will
2 take the objection.

3 BY MR. BLOOM:

4 Q. Does it say in what's called the manual, the how-to book,
5 that the planning has to be done with all the people present
6 so that everybody is on the same page?

7 MR. BARTLETT: Objection, Your Honor, the manual
8 speaks for itself.

9 THE COURT: Sustained. It speaks for itself.
10 BY MR. BLOOM:

11 Q. Do you have any recollection of the manual talking about
12 those issues?

13 A. I do not.

14 Q. Now, do you remember on February 21st, talking to Lacey
15 Phillabaum, that she told you -- if you would look at page 7,
16 did she tell you, about the 5th line down, that at the arson,
17 she claimed, on that day, February 21st of '06, that Briana
18 and Connor were the lookouts?

19 A. Briana and Connor were the lookouts.

20 Q. That's what she told you. Did they say -- did she say
21 rather on that day to you in that conference room, at the U.S.
22 Attorney's Office, that her recollection was that Briana and
23 Connor were the lookouts?

24 A. Yes.

25 Q. Did she also tell you that the evening of the arson,

1 Aval on and Connor had dropped off the bags there earlier in
2 the evening?

3 A. Are you referring me to that paragraph?

4 Q. Yes. If you look at the second paragraph, third line.

5 A. Yes.

6 Q. Did you or anyone else in the room ask her well, when did
7 that happen? Did it happen before you met with Kolar at the
8 restaurant? Did anyone ask her that question?

9 A. I don't recall.

10 Q. That would have been important?

11 A. Perhaps, but I don't recall if it was asked or not.

12 Q. You say perhaps. You wanted the details of what happened
13 at the arson, right?

14 A. She was providing details.

15 Q. Did you ask her, when she said it had been dropped off
16 earlier, did you ask: Well, is there a time when you were not
17 in the car or the van and they went and did something? Were
18 you present? Tell us what you remember. Were you present
19 when that event happened? Did you ask her that question?

20 A. I don't recall.

21 Q. A tape recording would help?

22 A. Yes.

23 Q. You weren't taking notes by this time, right?

24 A. I don't believe I was.

25 Q. Did you ask her, at any time before you met with Kolar in

1 the restaurant -- she did tell you they met Kolar at the
2 Greenlake restaurant, right?

3 A. The Greenlake Bar & Grill, yes.

4 Q. Did you ask her: How did it come to be -- who dropped off
5 this equipment and when did it happen and who was there? Did
6 you ask her any questions about that?

7 A. About the circumstances of the bags being dropped off?

8 Q. Yes.

9 A. I don't recall.

10 Q. Now, she also told you that Connor had dumpster dived for
11 some equipment; is that correct?

12 A. I recall that, yes.

13 Q. Was that on that same day, February 21st, she told you
14 that?

15 A. I recall that statement. I don't remember exactly which
16 date it was. I am looking for it here on the 302. Is it on
17 the 302? I don't see it on that page.

18 Q. Yes, I am looking for it too. If you look at the page
19 before, page 6, in the last paragraph, the second sentence.

20 A. Yes. Connor dumpster dived for hydro-bags for carrying
21 the fuel.

22 Q. What if he couldn't find any hydro-bags, or whatever they
23 are, in the dumpster, what were you going to do then?

24 A. No, I don't recall her being asked that.

25 Q. What did dumpster diving mean to you when she told you

1 that?

2 **A.** Going through large dumpsters behind businesses or
3 commercial businesses or commercial establishments. Garbage
4 dumpsters, looking inside of them for materials.

5 **Q.** So they were, as she was explaining to you -- they were
6 taking a chance and hoping that he would be able to find some
7 appropriate equipment to use in the arson; is that correct?

8 **A.** By taking a chance, by dumpster diving?

9 **Q.** Taking a chance they might not find what they needed.

10 **MR. BARTLETT:** Objection, argument.

11 **MR. BLOOM:** It is not argument. I am asking a
12 question. Did they ask her about that?

13 **THE COURT:** Well, did you ask her about it?

14 **A.** I don't recall asking her if they were taking a chance.

15 **THE COURT:** All right. Next question.

16 **BY MR. BLOOM:**

17 **Q.** Now, did she tell you something on that day about a clean
18 room?

19 **A.** She did -- yes.

20 **Q.** I am going to read to you from an exhibit in evidence,
21 Exhibit A-99. Do you have that in front of you?

22 **A.** A-99?

23 **Q.** Yes.

24 **A.** I don't see A-99. Yes, I have it here.

25 **Q.** Could you take a look at -- first, is that document

1 entitled "Setting Fires with Electrical Timers, an Earth
2 Liberation Front Guide"?

3 A. Yes, that's what it's called.

4 Q. It's dated May 2001?

5 A. That's correct.

6 Q. As you understood it, that was a document created by
7 William Rodgers and Stan Meyerhoff; is that correct?

8 A. I don't know who created this document.

9 Q. Could you turn to the lower right-hand corner, page
10 00722 --

11 A. Yes.

12 Q. It says "Creating a Clean Room," right?

13 A. Yes.

14 MR. BARTLETT: Objection, Your Honor. The document
15 speaks for itself. With regard to what Ms. Phillabaum
16 described, if there's a prior inconsistent statement with
17 Ms. Phillabaum, that's fair game, but this is just argument.
18 This document, which speaks for itself says, and what
19 Ms. Phillabaum testified to --

20 THE COURT: Let's see what the question says,
21 otherwise it speaks for itself, I guess. The question on
22 this, Mr. Bloom?

23 BY MR. BLOOM:

24 Q. Could you read the very first sentence that I am pointing
25 to?

1 **A.** "To set up a clean room, choose a location where your
2 hair and skin flakes are not already floating around."

3 **Q.** Now, am I correct that that would seem to exclude a place
4 where one of the participants had been living?

5 **A.** Not necessarily, no.

6 **Q.** If a person is living there, their hair and skin flakes --
7 wherever you live, their hair and skin flakes, as you
8 understand it, would be floating around?

9 MR. BARTLETT: Objection, this is argumentative.

10 MR. BLOOM: He can't just say it's argumentative, a
11 question I am asking of this witness.

12 THE COURT: I know you are asking a question. It may
13 be of general knowledge if you live in a house, it's in there.
14 So I am trying to understand why are we going over the
15 question in this fashion?

16 MR. BLOOM: I have never asked him this question.

17 THE COURT: Ask the question. He gave you an answer,
18 but you don't like it.

19 MR. BLOOM: He didn't give an answer. There was an
20 objection.

21 THE COURT: Do you want the question back?

22 COURT REPORTER: "Question: If a person is living
23 there, their hair and skin flakes -- wherever you live, their
24 hair and skin flakes, as you understand it, would be floating
25 around?"

1 BY MR. BLOOM:

2 Q. Right. Where you live, I live, where anybody lives, your
3 hair and skin flakes would be floating around; is that right?

4 A. Yes.

5 Q. From this excerpt in the manual, that's something that
6 should be avoided, creating a clean room and building devices
7 in a place where a participant lived?

8 THE COURT: That's argumentative now. He's answered
9 it.

10 BY MR. BLOOM:

11 Q. At some point, I am going to read from -- there's another
12 Exhibit, 515-I. Could you take a look at that, please? It's
13 also more or less a manual.

14 A. 515-I?

15 Q. Yes, sir. I would ask you to look at -- there are no page
16 numbers, but there are section numbers. About three-quarters
17 of the way into the document, there is a Section 6.4 called
18 "Drop offs and safe places to park."

19 MR. BARTLETT: Objection, this document speaks for
20 itself. If this witness has no -- he doesn't have personal
21 knowledge with regard to these events. That would be the only
22 relevant question.

23 THE COURT: That's what he asked him, what do you
24 know about it.

25 BY MR. BLOOM:

1 Q. I would ask you to take a look at the document that I put
2 up on the screen. It says, "A lookout arrives at the drop-off
3 ahead of time by foot or bicycle."

4 A. That's -- I have never seen this document before. I don't
5 even know what this is. The sentence you took off the
6 screen --

7 Q. I am sorry, I was going to move on to something else, but
8 please tell us.

9 A. The sentence reads, "The lookout arrives at the drop-off
10 ahead of time by foot or bicycle."

11 Q. The story Lacey Philabaum told you was different than
12 that; is that correct?

13 A. I am not necessarily sure. What do you mean?

14 Q. She told you that five people drove up to the scene at the
15 same time, right?

16 A. That they drove in the same vehicle from the Greenlake Bar
17 & Grill?

18 Q. Yes, sir.

19 A. Yes.

20 Q. She claims one of the people in the car -- or at some
21 point, she claimed that two of the people in the car were
22 lookouts?

23 A. That's correct.

24 Q. And they didn't arrive, according to her story, on foot or
25 bicycle ahead of time, right?

1 **A.** I don't know what she testified to.

2 **Q.** What she told you on February 21st, aside from what she
3 testified to, she didn't tell you on February 21st that
4 either -- that any lookout, Briana Waters, Connor or anyone
5 else, arrived ahead of time by either foot or by bicycle. She
6 didn't tell you that?

7 **A.** On the February 21st interview?

8 **Q.** Yes, sir, or on any other interview.

9 **A.** It says they went from the bar, carpooled in a rental car,
10 drove to a dead-end street where they were dropped off.

11 **Q.** She doesn't say anything about any lookout or lookouts,
12 one or two people getting there ahead of time by foot or by
13 bicycle?

14 **A.** I don't see that.

15 **Q.** You don't see it because that's not what she said. Let's
16 move on. Did she say to you on February 21st that she saw a
17 bike and she told Diver about it?

18 If you look on page 7 of the 302 in the second paragraph,
19 right in the middle of the second paragraph. Just to refresh
20 your recollection.

21 Did she tell you that while she was crouching down and
22 watching the building, she recalled seeing a bicycle parked
23 and that she talked to Diver about it?

24 **A.** Yes.

25 **Q.** So from your understanding of what Lacey Philabaum was

1 telling you on February 21st, not only was she and Kolar there
2 together, but they actually had a conversation right there in
3 front of the building they burned down?

4 **A.** That's what that would say.

5 **Q.** So did you think back when she was telling you that on
6 February 21st, how come Kolar doesn't remember her being
7 there? Does that strike you as odd?

8 **A.** No. My experience is that two different witnesses often
9 have two different accounts of the same event, just as Agent
10 Halla and I had two different accounts of the same event on
11 December 16th.

12 **Q.** Including who was there?

13 **A.** Possibly.

14 **Q.** We are talking about Kolar, a Ph.D. candidate, a really
15 smart person. She's saying, I don't remember Lacey Phillabaum
16 being there, and now you learn that there was actually a
17 conversation between them, Phillabaum and Kolar, just before
18 they actually torched the place?

19 **A.** That's what Phillabaum is telling us.

20 **Q.** Right?

21 **A.** Right.

22 **Q.** So the connection wasn't just that they were not just
23 there together, there was actual conversational interaction
24 between the two women just before they laid the place to
25 waste?

1 **A.** According to Ms. Philabaum, they had, apparently, a
2 conversation regarding a bicycle. The extent of that
3 conversation, I don't know. Like I said, two different people
4 are going to have two different accounts of what happened.
5 Ms. Kolar, from the very beginning, said her memories from
6 that event were fuzzy. I can't explain that.

7 **Q.** This is not about what kind of wine Kolar had at her yacht
8 club. This is about the people with whom she burned down a
9 building.

10 MR. BARTLETT: Objection, Your Honor. That's not
11 even a question for him to answer. He's asking this witness
12 to go into Jennifer Kolar's mind and explain what's going on.
13 It's simply improper.

14 THE COURT: Next question.

15 MR. BLOOM: Judge, I object to both the objections
16 and the speeches that he makes. If he doesn't want the jury
17 to hear this --

18 THE COURT: You are giving me one now. You are
19 asking him to explain something, so ask the next question and
20 let him answer and accept the answer.

21 BY MR. BLOOM:

22 **Q.** Did she tell you on that day that the rental car may have
23 been white in color?

24 **A.** Yes.

25 **Q.** She didn't say to you, did she, that I remember it being a

1 two-tone car?

2 A. I don't recall that.

3 Q. You've seen the picture of the car that's now in private
4 hands in the State of Wisconsin, right?

5 A. I am not sure if I have or not.

6 Q. You know there was some investigation of the Budget
7 people, and one of them reported -- gave you information about
8 whether or not there were two-tone cars that were available
9 for rental in May of '01 at the Olympia office of Budget?

10 A. I don't believe I conducted that investigation.

11 Q. Did you come to learn of it?

12 A. I don't recall that.

13 Q. Did Lacey Phillabaum tell you that Connor side-swiped a
14 car? Did she tell you that on February 21st? If you look on
15 page 7, the next-to-last paragraph or the last full paragraph.

16 "While driving away, Connor side-swiped a parked car."

17 A. Yes.

18 Q. Did she say and did she use the word "damaging both
19 vehicles"?

20 A. That's what it says in the 302. I don't know if that's
21 verbatim, but that's what we refer to her saying.

22 Q. The concept that you and Agent Halla decided to write is
23 that both vehicles were damaged?

24 A. Yes, that's what it says.

25 Q. Did she describe it on February 21st as something huge?

1 **A.** Huge?

2 **Q.** Yes. Did she use the word "huge," the event was huge in
3 her mind?

4 **A.** I don't recall that.

5 **Q.** Did you check with Budget, you and Agent Halla and any
6 other investigative officers -- check to see whether there was
7 any, eventually, report of damage that was filed after you
8 zeroed in on Budget? Did you try to find out if there was
9 damage?

10 **A.** I did not. I know Special Agent Halla did. I don't know
11 the exact conclusions that came from that.

12 **Q.** Did you investigate whether or not there were any cars
13 that had been in the area of the arson where there had been
14 reports of damage, hit and run damage?

15 **A.** I don't know exactly. I seem to recall Agent Halla
16 talking about that, but I don't know what investigation he
17 did.

18 **Q.** Did that lead anywhere, so far as you remember?

19 **A.** I don't know.

20 **Q.** Did the FBI conduct a canvass of the area, after speaking
21 with Phillabaum and Kolar, to learn -- let me withdraw that.

22 Kolar doesn't remember that at all, right?

23 **A.** I believe so.

24 **Q.** Did you -- after speaking with Phillabaum, did you
25 discuss -- did you canvass -- let me withdraw that.

1 Did you ask her to pinpoint the area where the accident
2 she said happened, would have been?

3 A. I don't recall. I don't know if Agent Halla may have done
4 that or not.

5 Q. One of the things that the FBI does is they do conduct a
6 canvass of the neighborhood to get information where it's
7 appropriate, right?

8 A. Where it's appropriate.

9 Q. Was there any canvass that took place of that neighborhood
10 to find out if there had been any hit and run event that had
11 damaged a parked car?

12 A. I don't know if there was or not. If there was, I wasn't
13 a part of it.

14 Q. Now, the FBI has a very good laboratory, doesn't it?

15 A. It has a lab.

16 Q. Better than CSI?

17 A. I don't know if anything is better than CSI.

18 Q. CSI is pretty good, they do whatever they want and they
19 get results?

20 A. Exactly.

21 Q. The FBI has a good laboratory too?

22 A. It's a good lab.

23 Q. They can analyze metallurgical damage on a fender if need
24 be?

25 A. What kind of damage?

1 Q. Metal damage, the fibers of the metal being dented if
2 there's been damage to a fender?

3 A. I don't know.

4 Q. Did you make any efforts, or did Agent Halla or any of
5 these two prosecutors, make any efforts to have that car
6 tested by the FBI lab in order to ascertain whether or not
7 Lacey Philabaum was accurate in her recollection?

8 A. I did not make that request.

9 Q. Did you come to learn that we, Mr. Fox and I, had asked of
10 the prosecutor whether such examination had been conducted?

11 A. No, I have no idea.

12 Q. Now, you came to learn during this investigation that a
13 number of the actions, whether they be arsons or crop pulling
14 or girdling -- the perpetrators involved in this group used
15 their own cars at times; is that correct?

16 A. Yes, I believe so.

17 Q. At Susanville, they used Dibee's car and Meyerhoff's car,
18 right?

19 A. I recall Mr. Dibee's car was involved, yes.

20 Q. The fourth arson committed by, not necessarily
21 chronologically, but one of the arsons committed by Kolar, the
22 Wray Gun Club in Colorado, she used her own car?

23 A. I don't know about that.

24 Q. Now, there was some searches conducted, and at the search
25 on December 7th or shortly thereafter, December 7th of '05, in

1 Arizona, Mr. Rodgers' place of business and residence was very
2 thoroughly searched, right?

3 A. I believe so, yes. I wasn't there, but it was searched.

4 Q. In all the documents and all the computer disk searches,
5 there was one mention of Briana Waters and it was a footnote
6 referring to her documentary that was called "Watch"; is that
7 correct?

8 A. I believe so.

9 Q. The search of Justin Solondz' cabin in the year 2007,
10 almost five years after the incident, there was some
11 literature seized; is that correct?

12 A. I wasn't there at the search. I know there was a map
13 seized. I know there was some caps, I believe, wool caps and
14 stocking caps seized. I can't recall exactly what was seized;
15 I wasn't there.

16 Q. This was four-and-a-half years later; is that correct?

17 A. I think so.

18 Q. I am sorry?

19 A. I think so.

20 Q. And there came a time when somebody decided to take a
21 photograph of some of the literature that was seized?

22 MR. BARTLETT: Objection, Your Honor, he wasn't even
23 at the search.

24 THE COURT: He wasn't there. Ask him something about
25 what he participated in.

1 BY MR. BLOOM:

2 Q. Did you see a photograph of materials and magazines where
3 the one put on top by somebody says "Anarchy"?

4 A. I don't recall seeing any photos from that search.

5 Q. Was there any discussion about, let's make a photograph
6 and let's put the "Anarchy" magazine right out in front
7 because that will really get a jury?

8 A. I wasn't at that search, and I did not have that
9 conversation with anyone.

10 Q. Now, in order to get -- let me withdraw that. Just a
11 couple more questions.

12 The FBI's job in this investigation, and every
13 investigation, is that's what you do, you do the
14 investigations, right?

15 A. Correct.

16 Q. You don't make decisions -- you follow leads, but you
17 don't make decisions about who's going to be prosecuted,
18 right?

19 A. Correct.

20 Q. That's up to the Department of Justice, the United States
21 Department of Justice, right?

22 A. Yes.

23 Q. In the year 2006, the Attorney General at that time was a
24 person named Alberto Gonzales?

25 A. In 2006?

1 Q. Yes.

2 A. I believe so.

3 Q. So it was the decision of the United States Department of
4 Justice, not the FBI, about who was going to be prosecuted,
5 right?

6 A. I am not sure it went up to that level. I think it stayed
7 at the level of the United States Attorney's Office in the
8 Western District of Washington.

9 Q. The United States Attorney's Office in the Western
10 District of Washington is under the jurisdiction of the United
11 States Department of Justice which was headed by Alberto
12 Gonzales, and the President was and still is George W. Bush;
13 is that correct?

14 A. Yes.

15 MR. BLOOM: I don't have any more questions.

16 If you'll give me a minute, Mr. Bartlett, to clear my
17 stuff out.

18 CROSS-EXAMINATION

19 BY MR. BARTLETT:

20 Q. Just briefly, Special Agent Torres. During the -- I was
21 going to say cross-examination, that would be wrong.

22 During your examination by Mr. Bloom, there was lengthy
23 discussions about the December 16th interview in 2005 with
24 Jennifer Kolar. Do you recall that?

25 A. Yes.

1 Q. At one point, you made a statement, and I am paraphrasing,
2 "there was no reason to believe that Mr. Di bee was involved in
3 the University of Washington arson."

4 Do you recall that?

5 A. Yes.

6 Q. Can you explain what was in your thought process and why
7 you thought that?

8 A. What was in my thought process --

9 MR. BLOOM: I am going to object on the same grounds.

10 THE COURT: You raised the answer, so he may answer.

11 A. My thought --

12 THE COURT: Your objection is noted.

13 A. My thought process was Ms. Kolar, during that interview,
14 had already given up Joseph Di bee for the Cavel West arson.
15 She had already given him up for the Susanville arson, so why
16 protect him on the UW arson.

17 Q. She could have been, but that was your thought process?

18 A. Exactly.

19 MR. BLOOM: Excuse me, I asked a dozen questions
20 about thought process and there was an objection every time,
21 and it was sustained every time.

22 THE COURT: You've made your objection.

23 MR. BLOOM: I am just asking the Court to strike that
24 and not to permit any questions about his thought process
25 unless I get to ask about thought process.

1 THE COURT: You've made your objection. I have ruled
2 on it. So let's move on to the next question.

3 MR. BARTLETT: May I approach, Your Honor.

4 BY MR. BARTLETT:

5 Q. I am bringing up what's previously been marked 114 and
6 117, and I am providing another copy for the Court.

7 BY MR. BARTLETT:

8 Q. Taking a look at the document marked first Government's
9 Exhibit 114. Could you go through that? I believe it's a
10 three-page document.

11 THE CLERK: It's 1114.

12 BY MR. BARTLETT:

13 Q. What did I say? I apologize, 1114.

14 A. Yes, I have this. This is a U.S. Department of Justice
15 proffer letter that was provided to Jennifer Kolar on December
16 16, 2005.

17 Q. Is it signed?

18 A. It is signed by Mr. Andrew Friedman, it is signed by
19 Jennifer Kolar, and it is signed by Michael Martin.

20 MR. BARTLETT: Offer Government's Exhibit 1114.

21 MR. BLOOM: Even though Mr. Bartlett did give it to
22 me --

23 MR. BARTLETT: I have an extra one.

24 MR. BLOOM: Let me take a look at it, and I will give
25 it back to you. Thank you.

1 THE COURT: He's offering that. Any objection to
2 that?

3 MR. BLOOM: No objection.

4 THE COURT: It is admitted.

5 (Exhibit No. 1114 admitted.)

6 BY MR. BARTLETT:

7 Q. Prior to speaking with Ms. Kolar on December 16th, was
8 this the letter that was signed?

9 A. Yes.

10 Q. And that you've been referring to as the proffer letter?

11 A. Yes.

12 Q. We can just go through this. It's dated December 16th,
13 right?

14 A. December 16, 2005.

15 Q. If you can just read the paragraphs, the first paragraph.

16 A. "The government requests that your client, Jennifer Kolar,
17 provide a proffer of information, by way of an in-person
18 interview, relating to the ongoing investigation into arsons
19 committed in the names of environmental or an animal-rights
20 activism. This letter sets forth the ground rules covering
21 the proffer of information by your client to the Government."

22 Q. No. 1, the purpose.

23 A. The purpose -- read it? "The purpose of your client
24 making a proffer is to provide the Government with an
25 opportunity to assess the value, extent and truthfulness of

1 your client's information about the potential criminal
2 liability of your client and others. "

3 Q. Could you clarify for the jury, at the time on December
4 16th when this proffer letter was presented to Ms. Kolar, is
5 there already a plea reached?

6 A. No plea agreement, no contract, no deal. It's just her
7 coming in and giving us information.

8 Q. No. 2.

9 A. "No. 2. Your client's proffer must be a complete and
10 entirely truthful account, with no material misstatements or
11 omissions of fact, regarding arsons and all wrongdoing
12 committed by your client and others. A knowing, material
13 false statement or material omission may result in prosecution
14 of your client under federal criminal laws. "

15 Q. No. 3.

16 A. "No. 3. No promises: While your client hopes to receive
17 some benefit by agreeing to be interviewed, your client
18 expressly understands that the Government is making no promise
19 of any consideration. "

20 Q. No. 4?

21 A. I am going to have to read this from my hard copy.

22 Q. I can move it up.

23 A. "No. 4. No direct use: The Government agrees that
24 statements and information contained in your client's proffer
25 may not be used in the Government's case-in-chief against your

1 client, should charges be filed and a trial held."

2 Q. What does that mean?

3 MR. BLOOM: I am going to object to that.

4 THE COURT: I think it speaks for itself.

5 BY MR. BARTLETT:

6 Q. No. 5?

7 A. "Impeachment: If your client should testify materially
8 contrary to the substance of the proffer, or otherwise present
9 in a legal proceeding a position materially inconsistent with
10 the proffer, the proffer may be used against your client as
11 impeachment or rebuttal evidence, or as the basis for a
12 prosecution for perjury or false statement. Nothing in this
13 letter is intended to preclude your client from challenging
14 the sufficiency of the Government's evidence; calling into
15 question the credibility of the Government witnesses;
16 questioning Government witnesses about their knowledge and
17 qualifications; challenging inconsistencies in the
18 Government's evidence, or challenging Government's witnesses
19 about their motives for testifying against your client."

20 Q. No. 6?

21 A. "Derivative use: The Government may make derivative use
22 of, and may pursue investigative leads suggested by any
23 statements or information provided by your client's proffer.
24 This provision is necessary to eliminate the necessity of a
25 Kastigar hearing wherein the Government would have to prove

1 that the evidence it seeks to introduce at trial or in a
2 related legal proceeding is derived from a 'legitimate source
3 wholly independent' of statements or information from the
4 proffer."

5 **Q.** No. 7?

6 **A.** "7. Sentencing information: Your client understands that
7 if he is indicted and convicted, the Government, pursuant to
8 18 U.S. Code Section 3661, must provide the contents of the
9 proffer to the sentencing judge. Pursuant to the United
10 States -- U.S.S.G. 1B1.8, however, the proffer may not be used
11 to determine the appropriate guideline sentence, except as
12 stated in the 'impeachment' paragraph above."

13 **Q.** No. 8?

14 **A.** "Brady discovery: Your client understands that Brady v.
15 Maryland and its progeny require that the Government provide
16 any charged defendant all information known to the Government
17 that tends to mitigate or negate such defendant's guilt.
18 Should your client's proffer contain Brady material, the
19 Government will be required to disclose this information to
20 the appropriate defendants."

21 **Q.** Finally, 9?

22 **A.** "9. Full agreement: This letter sets forth and
23 constitutes the full and complete agreement of the parties."

24 **Q.** Does Ms. Kolar and Mr. Martin's signature appear on the
25 third page?

1 A. Yes, they are both on this page.

2 Q. Taking a look at Government's 1117. Is that the proffer
3 letter for Lacey Philabaum?

4 A. Yes.

5 MR. BARTLETT: Offer 1117.

6 MR. BLOOM: No objection.

7 THE COURT: Admitted.

8 (Exhibit No. 1117 admitted.)

9 BY MR. BARTLETT:

10 Q. This is identical, with some minor changes in paragraph 5?

11 A. It is identical, but paragraph 5 impeachment --

12 Q. It looks like a shorter paragraph?

13 A. It's a shorter paragraph.

14 Q. There was discussion immediately after the morning break
15 about you and I having conversations during the morning break?

16 A. Yes.

17 Q. Was the conversation that you and I had and the documents
18 I showed you relating to these two letters so I could show you
19 ahead of time what I was going to ask you?

20 A. Yes.

21 Q. There was questions during Mr. Bloom's direct examination
22 of you relating to a photograph of Justin Solondz shown to
23 Jennifer Kolar on February 4th.

24 Do you remember those series of questions?

25 A. Yes.

1 Q. I want to clarify for the jury, what photograph was shown
2 to Ms. Kolar on that day? Was it the short hair Mr. Solondz
3 or the long hair Mr. Solondz?

4 A. I believe it was the short hair.

5 Q. When you say you believe that, why do you say that?

6 A. Because of a photo that I have seen -- I remember her
7 later on being shown a photo of him with long hair and
8 becoming more familiar with that photo than the short hair.

9 Q. Prior to testifying, did I ask you to look at the 302 from
10 February 4th and the photographs that were attached to refresh
11 your recollection as to what photograph?

12 A. That's correct.

13 Q. That's the discussion we had also during the break?

14 A. Yes. That's correct.

15 Q. Just for the record, if we could produce Government's
16 1011-C, which I believe is already admitted into evidence.

17 If the witness could be handed 1011-C.

18 Do you recognize that?

19 A. Yes, I do.

20 Q. What is it?

21 A. This is the picture of Justin Solondz with short hair.

22 Q. A copy?

23 A. A copy of a picture.

24 Q. This is what was shown to Jennifer Kolar on February 4th?

25 A. Yes.

1 MR. BLOOM: Objection, that was his testimony, he
2 wasn't sure.

3 THE COURT: Well, ask the question again and let's
4 get the answer.

5 A. I believe this was the picture shown to Ms. Kolar.

6 BY MR. BARTLETT:

7 Q. Referring to the 302 and the attachments to the 302 of
8 February 4th, did that provide you certainty?

9 A. I believe it was photo No. 4 shown to her and that's when
10 she said no.

11 MR. BARTLETT: Offer Exhibit 1011-C.

12 MR. BLOOM: I object. He's not identified that as
13 that's the one shown. He said he isn't certain.

14 MR. BARTLETT: Withdrawn.

15 THE COURT: All right.

16 BY MR. BARTLETT:

17 Q. There was a number of questions during your direct
18 examination of Mr. Bloom regarding your failure to ask
19 directly to Ms. Kolar whether Briana Waters was the lookout.

20 Before any discussion on January 6th or 7th, were you
21 aware of Mr. Martin's statement and his providing information?

22 A. Prior to January 5 or 6 --

23 Q. On January 5 or 6, were you aware -- did you become aware
24 that Mr. Martin had called and provided information?

25 A. Yes.

1 Q. What did you understand?

2 A. I understood that Mr. Martin called, I believe, Andrew
3 Friedman, Mr. Andrew Friedman, and said that Ms. Kolar had
4 remembered that Briana Waters was the third individual at the
5 arson.

6 MR. BARTLETT: No further questions.

7 REDIRECT EXAMINATION

8 BY MR. BLOOM:

9 Q. I just have a very few questions. About these proffers
10 that both -- the Philabaum and Kolar proffers that have been
11 moved into evidence. I actually just have one question.

12 The signatures -- I am sorry, the title page, page 2 of
13 each of those proffers, after it says full agreement. After
14 it says that, right, it says John McKay, United States
15 Attorney.

16 He was one of the people who was fired by Alberto
17 Gonzales, wasn't he?

18 A. I know he is no longer employed. I don't know if he was
19 fired or asked to leave.

20 Q. It was all over the newspapers. There were hearings.
21 Gonzales testified at least once -- at least twice, I should
22 say -- before the United States Congress, where he testified
23 400 times that he didn't remember. Do you remember that?

24 A. Who testified?

25 Q. Alberto Gonzales, the person who was the Attorney General

1 at the time a decision was made to proceed with this
2 prosecution?

3 MR. BARTLETT: Your Honor, this is totally
4 irrelevant.

5 THE COURT: Well, is that the only question?

6 MR. BLOOM: Yes.

7 THE COURT: Then I will take it up at the break as to
8 where we go with it.

9 MR. BLOOM: I have no other questions.

10 THE COURT: Then let's take the noon recess at this
11 time and have you get yourself a sandwich. Be back into the
12 building, into the jury room. Don't discuss the case. Leave
13 your books on your chair. 1:00.

14 (Jury not present.)

15 THE COURT: All right. You may be seated.

16 You may step down. Same admonition. Let me have you step
17 out so I can see what's going to be said.

18 (Witness departed courtroom.)

19 THE COURT: All right. The objection has been raised
20 as to the relevance of this. Let me have you speak to that.

21 MR. BLOOM: Sure. There has been testimony in this
22 case that Stan Meyerhoff -- on March 17th of 2006, Stan
23 Meyerhoff, a person at the center of nearly all the arsons and
24 was involved in the planning of this so-called double whammy,
25 I looked at Briana Waters' photograph and said: "That woman

1 looks familiar. She's not involved."

2 It's my position -- it's our position that this case
3 should have been over on that date, that the reason this
4 prosecution continued is because of the politics of the George
5 W. Bush/Alberto Gonzales administration and we are entitled to
6 prove that and entitled to prove that the continuing
7 prosecution after at least that event was politically
8 motivated, not based on facts, not based on guilt.

9 THE COURT: I am trying to understand the question.
10 I heard the speech, but I am trying to understand your
11 question. The question to the witness was whether or not John
12 McKay was fired by him.

13 MR. BLOOM: Not by him. Would you read the question
14 back?

15 COURT REPORTER: "Question: I just have a very few
16 questions. About these proffers that both -- the Philabaum
17 and Kolar proffers that have been moved into evidence. I
18 actually just have one question.

19 "The signatures -- I am sorry, the title page, page 2 of
20 each of those proffers, after it says full agreement. After
21 it says that, right, it says John McKay, United States
22 Attorney.

23 "He was one of the people who was fired by Alberto
24 Gonzales, wasn't he?

25 "Answer: I know he is no longer employed. I don't

1 know if he was fired or asked to leave.

2 "Question: It was all over the newspapers. There
3 were hearings. Gonzales testified at least once -- at least
4 twice, I should say -- before the United States Congress,
5 where he testified 400 times that he didn't remember. Do you
6 remember that?

7 "Answer: Who testified?

8 "Question: Alberto Gonzales, the person who was the
9 Attorney General at the time a decision was made to proceed
10 with this prosecution?"

11 MR. BLOOM: I want to add one more thought to my
12 argument. As I remember it, Lacey Phillips denied that this
13 was a political prosecution. We are entitled to impeach her
14 with evidence that supports the argument.

15 THE COURT: I am trying to understand the question.
16 I don't know how -- you want him to answer whether or not John
17 McKay, a yes or no, as to whether or not he was fired when
18 Gonzales was the Attorney General? Is that the question?

19 MR. BLOOM: That was my question.

20 MR. BARTLETT: What relevance is that, Your Honor.

21 THE COURT: I don't know the relevance of it. If
22 it's irrelevant, he shouldn't get into it. This is 403. He
23 can say whether he knows it or not knows it.

24 MR. BARTLETT: I want an offer of proof as to how
25 they are going to prove that this was a politically driven

1 prosecution by George W. Bush and Alberto Gonzales.

2 THE COURT: I can't answer that.

3 MR. BARTLETT: They can. You can demand an offer of
4 proof so they don't go down paths that have no basis
5 whatsoever, as opposed to a paranoid innuendo.

6 THE COURT: I don't know what you are saying,
7 Mr. Bartlett. I don't know if Mr. Bloom is saying that he's
8 going to follow up that question with a bunch of witnesses to
9 try to show that.

10 MR. BARTLETT: If he's not, Your Honor, it's
11 irrelevant. Under 403, the question is totally irrelevant.

12 THE COURT: Your objection is noted. He can answer
13 yes or no, and that's the end of it. That's as far as it is
14 going to go. Whatever the answer is, accept it and move on.

15 MR. BARTLETT: Just to clarify the record, I assume I
16 can tell the jury that John McKay was one of my best personal
17 friends and he hired me as first assistant, and of all the
18 people in the Western District of Washington that are upset
19 about John McKay's treatment under Albert Gonzales, I would be
20 at the top of the list.

21 MR. BLOOM: If he wants to testify.

22 THE COURT: I am not going to sit here and listen to
23 what's going on here now. We are at recess.

24 THE CLERK: All rise. Court is at recess.

25 (Luncheon recess.)

1 (Jury not present.)

2 THE COURT: All right, you may be seated.

3 Are we ready?

4 MR. BLOOM: I have indicated to the prosecutors that
5 I would withdraw the last question, and we have no further
6 questions of the witness. Mr. Bartlett asked if it was okay
7 for us to let him go; I said yes.

8 THE COURT: So we are through with Mr. Torres?

9 MR. BLOOM: Yes.

10 THE COURT: I don't know what else there is to say
11 about him.

12 MR. BLOOM: It's determined there are no questions,
13 or however the Court wants to handle it.

14 THE COURT: You have your next witness?

15 MR. FOX: Yes, Heather Moore.

16 THE COURT: You did say the last question was
17 withdrawn?

18 MR. BLOOM: Yes.

19 (Jury present.)

20 THE COURT: All right. You may be seated.

21 The last question posed to Mr. Torres has been withdrawn,
22 so we are moving now to the next witness.

23 MR. FOX: Your Honor, we would call Heather Moore.

24 Come forward and raise your right hand.

25 HEATHER MOORE, called as a witness, duly sworn.

1 THE COURT: Just come around and take the witness
2 chair.

3 DIRECT EXAMINATION

4 BY MR. FOX:

5 Q. Good afternoon.

6 A. Hi .

7 Q. Could you please state your name and spell your last name
8 and also speak into the microphone?

9 A. Heather Moore. M-O-O-R-E.

10 Q. Ms. Moore, where do you live?

11 A. Tumwater.

12 Q. Who do you live with?

13 A. My husband and daughter.

14 Q. Why don't you bring the microphone a little closer to your
15 mouth.

16 What is your husband's name?

17 A. Jim Dawson.

18 Q. Your daughter's name is what?

19 A. Kierran Winter.

20 Q. How old is your daughter?

21 A. She's seven.

22 Q. Seven. What do you do for a living?

23 A. I am a legislative aid in the House of Representatives.

24 Q. That's down in Olympia?

25 A. It is.

- 1 Q. Do you know Briana Waters?
- 2 A. Yes.
- 3 Q. How do you know Briana Waters?
- 4 A. We were in college together.
- 5 Q. What college was that?
- 6 A. Evergreen.
- 7 Q. What years were you in college at Evergreen?
- 8 A. '96 to 2000.
- 9 Q. Ms. Waters, was she there at the same time?
- 10 A. During the same time, yes.
- 11 Q. Now, when you met Ms. Waters, generally, what types of
- 12 things was she doing?
- 13 A. In her life at the time?
- 14 Q. Yes.
- 15 A. School, a lot of school. Hanging out with friends. I
- 16 think that was pretty much the circumstances that I was around
- 17 her.
- 18 Q. So you were friends with Ms. Waters?
- 19 A. Uh-huh.
- 20 Q. Now, did you know Justin Solondz?
- 21 A. I did.
- 22 Q. How did you know Mr. Solondz?
- 23 A. Same circumstances, same circle of friends and school.
- 24 Q. Who is Ocean?
- 25 A. My ex-husband.

1 Q. And when did you meet Ocean?

2 A. When did I meet Ocean? In '98.

3 Q. 1998. And at some point -- you said he was your
4 ex-husband -- you got married to him?

5 A. Yes.

6 Q. Is your child his child as well?

7 A. Yes.

8 Q. Now, in 2000 -- taking you back to the spring of 2000, did
9 anything significant happen to you during that timeframe?

10 A. To me, in the spring of 2000?

11 Q. Yes. With Ocean.

12 A. The significance of 2000 with Ocean. Oh, yes, we were in
13 a car accident together.

14 Q. Okay. As a result of this accident, what happened with
15 Ocean?

16 A. He is a quadriplegic as a result.

17 Q. Over the next year from -- when was the car accident; do
18 you remember what month?

19 A. It was April 5th.

20 Q. Of 2000?

21 A. Yes.

22 Q. Over the next, the course of the next year, where did you
23 and Ocean reside?

24 A. Over the course of the next year?

25 Q. Right.

1 A. For a period of time, the University of Washington
2 Rehabilitation Center, and then on Dickerson.

3 Q. Dickerson, in which city?

4 A. In Olympia. And then after that on Conger in Olympia.

5 Q. You say on Conger, do you remember the address on Conger?

6 A. 2613.

7 Q. Conger. I am showing you --

8 A. Or 1326.

9 Q. I am showing you what has been admitted into evidence as
10 Exhibit 733. Does that look familiar?

11 A. Oh, look at that. Yes, that's the house.

12 Q. That's the house. Now, did you rent the house or did you
13 buy the house?

14 A. Bought it.

15 Q. Do you recall when you bought the house?

16 A. I remember getting keys days before Procession of the
17 Species, which was in April.

18 Q. Days before what?

19 A. Procession of Species, which is in April.

20 Q. So April of what year?

21 A. Of 2000.

22 Q. 2000 --

23 A. Oh, a year later, so 2001.

24 Q. Now, when you bought the house, what was its condition?

25 Do you remember anything about the house when you bought

1 the house?

2 **A.** Well, I remember that we couldn't live in it until it was
3 fixed, because it couldn't accommodate Ocean's needs.

4 **Q.** What were Ocean's needs?

5 **A.** He needed a ramp to get into the house and a bathroom that
6 had, you know, facilities that would allow him to wheel into a
7 shower and a bedroom large enough for a bed for him. So there
8 was some significant changes that happened to the house.

9 **Q.** How about the kitchen?

10 **A.** There was not, at the time, any significant changes to the
11 kitchen.

12 **Q.** So the changes that took place in the house, do you
13 remember when the construction started?

14 **A.** It was soon after we had bought it. We started sort of
15 evaluating what things needed to happen and finding people to
16 do it and discovering what sort of requirements there were
17 from the state. That was right after we got the house that we
18 started that process.

19 **Q.** When you started that process, where were you and Ocean
20 living?

21 **A.** I was living with my parents, and Ocean was living on
22 Dickerson.

23 **Q.** Dickerson in Olympia?

24 **A.** Yes.

25 **Q.** Do you remember when Ocean was able to move into the

1 house?

2 **A.** It was in August.

3 **Q.** Of?

4 **A.** Of 2001.

5 **Q.** Okay. Is that the time you moved into the house as well?

6 **A.** Uh-huh.

7 **Q.** You have to say yes or no.

8 **A.** I am sorry, yes.

9 **Q.** Now, were there any other buildings on your property,
10 other than the house itself?

11 **A.** A garage.

12 **Q.** Do you remember what the garage was like back when you got
13 possession of your house?

14 **A.** It was what we had imagined, was a garage used for
15 carpentry work, because it had a fair amount of wood there and
16 debris.

17 **Q.** And was this a dry garage or a wet garage?

18 **A.** Dry or wet? Well, it had a flat roof on it, and that sort
19 of created some problems as far as water draining not
20 properly.

21 **Q.** Where would the water end up?

22 **A.** Inside.

23 **Q.** Inside?

24 **A.** The garage.

25 **Q.** Did this cause any other problems inside the garage?

1 **A.** Yeah, the dry wall was replaced later on because it had
2 mold on it.

3 **Q.** Now, you say that you had contractors come in and do some
4 of this work on the house?

5 **A.** Not contractors, but they were people skilled in
6 construction, yes.

7 **Q.** The people that came in to do the work, did they just
8 start work and work straight through the next couple months?

9 **A.** Yeah, it was pretty much nonstop, because they started
10 with some demolition and there was plumbing that needed to
11 happen and a whole variety of things.

12 **Q.** How many people do you think worked on this house?

13 **A.** I would say a safe estimate would be 10 to 15.

14 **Q.** That was over the whole timeframe, right?

15 **A.** Yeah.

16 **Q.** Now, who lived in the house while the work was being done
17 on the house?

18 **A.** Nobody lived in the actual house itself. Briana --

19 **Q.** Go ahead.

20 **A.** Briana was staying in the garage that was in the back of
21 the property.

22 **Q.** Did she pay you rent?

23 **A.** No, she stayed there and kept an eye on it for us.

24 **Q.** Okay.

25 **A.** And watered the garden.

1 Q. Was there a garden in the backyard?

2 A. Uh-huh.

3 Q. I am sorry, you have to say yes or no.

4 A. Yes, I am sorry.

5 Q. Was there a garden already there when you got the house?

6 A. No, I put that in. There was raised beds, but I planted.

7 Q. Do you recall when you planted them, the garden?

8 A. It was sometime before summer actually kicked in.

9 Q. So, would that have been, what, like the first month you
10 got it or --

11 A. It wasn't right away. I would say sometime like May/June.

12 Q. Now, earlier you had said -- did anything have to be done
13 in the kitchen at all in terms of the counters or anything
14 like that?

15 MR. FRIEDMAN: Objection, Your Honor, leading.

16 MR. FOX: Let me rephrase.

17 BY MR. FOX:

18 Q. Was there any work done in the kitchen?

19 A. Well, I removed cabinet door fronts. That's something
20 that happened in the kitchen. The floor was sanded and
21 refurbi shed.

22 Q. Okay.

23 A. And there was a piece of -- I think there was a piece of
24 the countertop that was removed, if I remember correctly.

25 Q. Do you recall exactly when?

1 **A.** When that happened?

2 **Q.** When any of the work in the kitchen took place.

3 **A.** That was over a period of time.

4 **Q.** Okay.

5 **A.** It started right away. When we got the house in April, I
6 went in and did the cabinet changes. And then I think the
7 countertop was removed after that, and it was like a
8 countertop with a base to it. And then the floors were worked
9 on sometime after that.

10 **Q.** Now, while this construction was going on, did you have
11 occasion to ever stop by the house?

12 **A.** Oh, yeah. Frequently -- yes, frequently.

13 **Q.** When you say frequently, is this every day?

14 **A.** Not every day, but a number of times during the week I
15 would go by there.

16 **Q.** What type of things would you do when you stopped by the
17 house?

18 **A.** Admire the work. Check in with people, see if they needed
19 anything. Say hi. See what's happening.

20 **Q.** Did you ever see Briana Waters when you would stop by?

21 **A.** Occasionally.

22 **Q.** Did you ever go to the garage?

23 **A.** Yes.

24 **Q.** Now, did there ever come a time when you stopped by the
25 house in May of 2001 and you saw anything strange or odd?

1 **A.** In May, no.

2 **Q.** Did you ever see plastic on the walls of the garage?

3 **A.** No.

4 **Q.** Did you ever see strange people that you'd never seen
5 before hanging out at the house?

6 **A.** No.

7 **Q.** Now, did you ever see any gasoline hanging out?

8 **A.** No.

9 **Q.** How long did Briana Waters live at this house?

10 **A.** It was until sometime in September, August, right around
11 there. I want to say beginning of September. From May until
12 then, or sometime in May. I am a little foggy about what
13 time.

14 **Q.** It was about the time you moved in?

15 **A.** That I moved in?

16 **Q.** Yes.

17 **A.** That she left? She left after I moved in.

18 **Q.** Now, during the whole time that the construction is going
19 on, I guess you just said that you would come by a couple
20 times a week. For how long would you come by? Were these
21 long periods of time?

22 **A.** It really depended on -- there were different
23 circumstances, like why I was there, you know. It could have
24 taken longer than other times than if I had my daughter with
25 me, you know. That impacted how long I stayed. If I didn't,

1 then, you know, how long I had childcare for would affect how
2 long I could stay.

3 Q. Were there ever periods of time where you might not come
4 by for a couple days at a time?

5 A. Maybe two or three, maybe, yeah.

6 Q. Now, when you would stop by the house, did you ever call
7 Briana Waters up and say, hey, I am stopping by the house?

8 A. Never.

9 Q. After Ms. Waters left the house, how much contact did you
10 have with her after that, after she left the house?

11 A. After she moved out of Washington?

12 Q. Yeah. Well, let's say after she moved out of the house.

13 A. Not a lot of contact between us.

14 Q. You still consider her to be a friend?

15 A. Yeah, I would consider her a friend.

16 Q. Now, at some point, did you ever have occasion to meet any
17 FBI officers?

18 A. Would I?

19 Q. Did you?

20 A. Did I?

21 Q. Yes.

22 A. At that time?

23 Q. No, subsequently, like in the last two years.

24 A. Yes.

25 Q. What happened?

1 A. With?

2 Q. With the FBI officers.

3 A. Well, they arrived at my place of work looking for me,
4 wanting to ask me some questions about something that I hadn't
5 heard of.

6 Q. Subsequently, did you meet with any prosecutors?

7 A. Yes.

8 MR. FOX: I have no further questions.

9 THE COURT: Any cross?

10 MR. FRIEDMAN: Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. FRIEDMAN:

13 Q. Good afternoon, Ms. Moore.

14 A. Hi.

15 Q. The last question you were asked was did you ever meet
16 with any prosecutors. You in fact came to our office and met
17 with me once, is that correct?

18 A. Yes.

19 Q. Probably in 2006?

20 A. Sure, yes.

21 Q. You told us you were married to Ocean.

22 A. Yes.

23 Q. Is that correct? Beginning in about 1998?

24 A. '99.

25 Q. 1999. Then you were involved in a serious car accident

1 with him in 2000?

2 **A.** Correct.

3 **Q.** And he became a quadriplegic as a result of that?

4 **A.** Yes.

5 **Q.** And then I guess you spent some time together at the
6 University of Washington and then back in Olympia?

7 **A.** Correct.

8 **Q.** And you separated from him in 2002; is that correct?

9 **A.** Yes.

10 **Q.** And you had bought the Conger Street house with him before
11 that, correct?

12 **A.** Yes.

13 **Q.** Back in 2001?

14 **A.** Yes.

15 **Q.** You bought that house actually in March of 2001; is that
16 correct?

17 **A.** I think that's when the process began.

18 **Q.** That's actually when you settled on the house; isn't that
19 correct?

20 **A.** I could not say for certain. I just know when I got the
21 keys in my hand.

22 **Q.** Could you take a look at Exhibit 732?

23 **A.** Yes.

24 **Q.** It should appear on the screen in front of you. It's
25 already been admitted into evidence. It will just take a

1 moment, I think.

2 Would you take a look at Exhibit 732 and tell me if you
3 recognize that?

4 Is it fair to say it's a deed for the house?

5 **A.** Yes.

6 MR. FRIEDMAN: The government offers 732.

7 MR. FOX: No objection.

8 THE COURT: Admitted.

9 (Exhibit No. 732 admitted.)

10 BY MR. FRIEDMAN:

11 **Q.** Now it should appear on the screen in front of you.

12 If you look at the middle of that, do you see the date on
13 which the --

14 **A.** On the front page?

15 **Q.** The middle of the front page, there should be a date for
16 the --

17 **A.** March 16.

18 **Q.** March 16, 2001?

19 **A.** Uh-huh.

20 **Q.** So that's when the sale closed and when you and Ocean
21 officially became owners?

22 **A.** Okay.

23 **Q.** After that, you said there was some renovation that needed
24 to be done before --

25 **A.** Yes.

1 Q. -- he could move into the house?

2 A. Yes.

3 THE COURT: Is this to be displayed?

4 THE CLERK: It's not coming up.

5 Is it on the document camera or on the computer?

6 MR. FRIEDMAN: It is on the computer.

7 THE CLERK: Okay, I misunderstood. Thank you.

8 BY MR. FRIEDMAN:

9 Q. So the construction happened in some period of months
10 beginning after March of 2001?

11 A. Yes.

12 Q. Now, you testified that you had known Briana Waters from
13 school, I guess, the same circle of friends?

14 A. Yes.

15 Q. Did you consider her a good friend back before the time
16 she moved into your house?

17 A. I considered her a friend.

18 Q. Have you given money to her legal defense?

19 A. No.

20 Q. Let me ask you again about the house and the garage. We
21 looked at a picture a moment ago. If you could look at
22 Exhibit 733, the third page, and that should show up on the
23 screen in front of you.

24 Is that a picture of the garage and the outbuilding at
25 your Conger Street house?

- 1 **A.** This is not what it looked like when I lived there. But
2 yes, that's it.
- 3 **Q.** That's the same building?
- 4 **A.** Yes.
- 5 **Q.** Just painted a different color, I take it?
- 6 **A.** Yes.
- 7 **Q.** That's the building in which Briana Waters was living back
8 in 2001?
- 9 **A.** Yes.
- 10 **Q.** When she lived there, she had access to the main house
11 also, right, she had keys to the house?
- 12 **A.** Yes, she was able to go in it.
- 13 **Q.** You had a telephone in the house, correct?
- 14 **A.** Yes.
- 15 **Q.** And she had access to and could use that telephone?
- 16 **A.** Yes.
- 17 **Q.** Do you know whether she had her own car at that time?
- 18 **A.** Not that I remember.
- 19 **Q.** In fact, she didn't have a car at that time; that's
20 correct, isn't it?
- 21 **A.** Sure, yes.
- 22 **Q.** And she didn't have a cell phone of her own that she used
23 at that time, correct?
- 24 **A.** Not that I know of.
- 25 **Q.** Your sense was that she didn't have a lot of money?

1 A. That's correct.

2 Q. To have a car or a cell phone of her own?

3 A. That's correct.

4 Q. You told us a minute ago that you stopped by sometimes at
5 the house. Do you recall being interviewed when you came to
6 our office about talking about how often you came to the
7 house?

8 A. I don't.

9 Q. Do you recall discussing who was supposed to live here
10 during this period? Do you recall discussing whether anyone
11 other than Briana Waters was allowed to live in the house
12 during that period?

13 A. Allowed to live in the house?

14 Q. Did you give permission to anyone other than Briana Waters
15 to live in the house or the garage?

16 A. At the same time?

17 Q. Yes.

18 A. There was a friend of my daughter's who stayed there for a
19 couple of nights in the main house.

20 Q. But with that exception, you didn't -- Justin Solondz
21 wasn't supposed to live there, correct?

22 A. No.

23 Q. In fact, you specifically told Briana Waters he wasn't
24 supposed to live there?

25 A. He wasn't invited to live there.

1 Q. Do you recall being interviewed and discussing how often
2 you visited the house and whether you visited it enough to
3 even know whether Justin Solondz was living there?

4 A. No, I don't remember that.

5 MR. FRIEDMAN: May the witness be shown an exhibit,
6 the report of her prior interview?

7 BY MR. FRIEDMAN:

8 Q. Do you think looking at that report might refresh your
9 memory about what you said?

10 A. Sure.

11 Q. Would you turn to the third page of the report of your
12 interview? Read the top full paragraph to yourself.

13 A. Okay.

14 Q. Does that refresh your memory of how often you stopped by?

15 A. It speaks to my memory at the time, yeah.

16 Q. In fact, you said that you stopped by rarely enough -- you
17 stopped by rarely; isn't that correct?

18 A. The back.

19 Q. You stopped by rarely enough that you wouldn't even have
20 known if anyone was visiting or if Justin Solondz was living
21 there?

22 A. If anybody was visiting her, correct.

23 Q. Or if Justin Solondz was living there, correct?

24 A. There was no -- well, there was no way to know if he was
25 or was not.

1 Q. Because you stopped by rarely enough that --

2 A. In the back, correct.

3 MR. FRIEDMAN: Thank you very much, Ms. Moore.

4 THE COURT: Anything else?

5 REDIRECT EXAMINATION

6 BY MR. FOX:

7 Q. Ms. Moore, you said rarely. Is that like -- I mean, how
8 many hours in a week would you say you would be by that house?

9 A. How many hours?

10 Q. Yes.

11 A. On an average?

12 Q. Yes. During the time of the construction.

13 A. Every week would be different. Circumstances of what was
14 happening would be different. Five, maybe, over -- you know,
15 five to seven over the course of a week.

16 Q. So the majority of the time you weren't at the house,
17 right?

18 A. Exactly.

19 MR. FRIEDMAN: Objection, Your Honor, Leading.

20 MR. FOX: You are right.

21 BY MR. FOX:

22 Q. I guess the times that you did come by, did you ever
23 announce that you were coming by?

24 A. Never.

25 MR. FOX: I have no further questions.

1 MR. FRIEDMAN: No further questions, Your Honor.

2 THE COURT: All right. You may step down.

3 THE WITNESS: Thank you.

4 MR. BLOOM: James Dawson, please.

5 THE COURT: Let me have you come forward and raise
6 your right hand and be sworn.

7 JAMES DAWSON, called as a witness, duly sworn.

8 THE COURT: You may take the witness chair.

9 DIRECT EXAMINATION

10 BY MR. BLOOM:

11 Q. Hi. Could you please tell the jury your full name,
12 please?

13 A. It's James Edward Dawson.

14 Q. And are you married?

15 A. Yes, I am.

16 Q. Who are you married to?

17 A. Heather Ellen Moore.

18 Q. How old are you?

19 A. I am 28.

20 Q. Where were you born?

21 A. I was born in Michigan.

22 Q. When did you come up here to the northwest?

23 A. In the fall of 1998.

24 Q. When you came here, please tell the jury where you moved
25 to, what city?

1 **A.** I moved to Olympia, Washington.

2 **Q.** What did you do when you moved there?

3 **A.** I went to the Evergreen State College.

4 **Q.** For how long did you stay there?

5 **A.** In Olympia or Evergreen?

6 **Q.** At Evergreen.

7 **A.** I graduated in 2003, but I took a year off of school, too,
8 during that time.

9 **Q.** Stay in the microphone.

10 **A.** No problem, sorry.

11 I took a year off during that time, but I graduated in
12 2003, and I was away for a year also during that time.

13 **Q.** When were you away?

14 **A.** I was gone in an environmental leadership training program
15 from the summer of 2000 until September of 2001.

16 **Q.** How are you employed now?

17 **A.** I work for a nonprofit advocacy organization called the
18 Washington Toxics Coalition as a community organizer.

19 **Q.** How long have you been with them?

20 **A.** Since May of 2006.

21 **Q.** Where do you live now?

22 **A.** I live in Tumwater, Washington.

23 **Q.** In relation to Olympia, where is that?

24 **A.** About a half mile away from Olympia.

25 **Q.** Who do you live with?

1 **A.** I live with my wife and my stepdaughter, who's seven, and
2 a dog and cat.

3 **Q.** And her name?

4 **A.** Her name is Kierren Winter.

5 **Q.** Is Ocean her biological father?

6 **A.** Yes, that's correct.

7 **Q.** How long have you been with Heather?

8 **A.** We have been together since March of 2002. And we've been
9 married since October of 2003.

10 **Q.** Do you remember meeting Briana Waters?

11 **A.** I don't remember the first time I met Briana Waters, but I
12 remember meeting her.

13 **Q.** Do you see her here in the courtroom?

14 **A.** Yes.

15 **Q.** Could you point her out, please?

16 **A.** She's right over there.

17 **Q.** Indicating Ms. Waters?

18 **A.** Yes.

19 **Q.** Is she a friend of yours?

20 **A.** Yes, a great friend.

21 **Q.** Can you tell us how you met her?

22 **A.** I met her doing political work at the Evergreen State
23 College.

24 **Q.** What kind of political work would that have been?

25 **A.** Well, I think we might have met in the student activities

1 area because we were both involved in different environmental
2 student groups, I believe is the first time we met.

3 Q. Tell the jury about what you remember of your interactions
4 with her?

5 A. I have always really enjoyed my interactions with Briana.
6 She's a fun, honest person I trust greatly, and we've done a
7 lot of, I think, great work together to help make the world a
8 better place and also had a lot of fun doing it.

9 Q. Do you have a sense -- can you evaluate or give us your
10 opinion as to whether she is a violent person or a nonviolent
11 person?

12 A. I would say she's definitely a nonviolent person.

13 MR. BLOOM: I don't have any further questions.

14 CROSS-EXAMINATION

15 BY MR. BARTLETT:

16 Q. Good afternoon.

17 A. Hi.

18 Q. In addition to being a friend of Briana Waters, you are
19 also a friend of Justin Solondz?

20 A. That's correct.

21 Q. Good friend?

22 A. I was very good friends with him, uh-huh.

23 Q. When's the last time you talked to him?

24 A. I haven't talked to him in a couple years.

25 Q. As I understand it, you were out of the country for some

1 portion of 1999 until September of 2001?

2 **A.** No, I was in the country; I was out of state. And that
3 was what I previously said, the environmental leadership
4 training program. I was traveling from the summer of 2000,
5 and I returned in September of 2001.

6 **Q.** Got you. So you weren't here in May of 2001?

7 **A.** No, I was not.

8 **Q.** Was there a point in time when you lived at 880 Division
9 Street?

10 **A.** I don't remember the address exactly, but yeah, that
11 sounds right.

12 **Q.** Kind of a group home?

13 **A.** What was that?

14 **Q.** Kind of a group home?

15 **A.** It wasn't --

16 **Q.** You lived there?

17 **A.** I lived there, yes.

18 **Q.** Ocean lived there?

19 **A.** Yes.

20 **Q.** Briana lived there?

21 **A.** That's correct.

22 **Q.** And Mr. Solondz lived there?

23 **A.** Yes.

24 **Q.** How long did the four of you live together?

25 **A.** I believe it was for nine months or ten months, something

1 I like that. I don't remember the exact dates.

2 Q. Have you donated any money to Ms. Waters?

3 A. No.

4 Q. In addition to knowing Justin Solondz, did you know a
5 person named Bill Rodgers or Avalon?

6 A. I did know him, uh-huh.

7 Q. I assume you've met Mr. Rodgers during the Watch Mountain
8 campaign?

9 A. That would probably be the case, yeah.

10 Q. In addition to knowing him, you were aware that
11 Mr. Rodgers and Briana were good friends?

12 A. No, actually I wasn't aware that they were good friends.

13 Q. The Watch Mountain campaign, as I understand it, that was
14 a campaign primarily sponsored by Earth First?

15 A. Well, the Cascade Defense -- I am sorry, I am forgetting
16 the name of it. The group that leads in some Earth First
17 values.

18 Q. You said Earth First values. I believe Mr. Bloom
19 described it as people from Earth First -- people from Earth
20 First, the hippies, the tree huggers, the people who wanted to
21 save the earth. Those are the people that were involved in
22 the Watch Mountain campaign, correct?

23 A. I guess you could call them hippies. I wouldn't
24 necessarily categorize them that way.

25 Q. Would you describe Earth First as a mainstream

1 environmental group or radical environmental group?

2 **A.** I think -- well, Earth First isn't really a group. So
3 each individual person who thinks that they're associated with
4 Earth First, I think, is different. I think our group would
5 be considered radical in the way we went about things. When
6 you look at the work that we did, we brought together people
7 who were fighting, and we brought them together and
8 successfully won.

9 So we brought a former timber community together with
10 fairly radical college students. And up until that point --
11 that was at the end of the big spotted owl controversy when
12 timber workers and environmentalists hated each other, and we
13 brought them together to protect their communities.

14 So it was very impressive in the work that we were doing,
15 and in that way I think it was radical.

16 **MR. BARTLETT:** If I could approach the witness?

17 **BY MR. BARTLETT:**

18 **Q.** I hand you what's been previously marked as Government's
19 1105.

20 Do you recognize that as the website for Earth First?

21 **A.** I am not familiar with the appearance of this website. I
22 haven't -- I don't even know if I ever went to Earth First
23 website.

24 **Q.** Looking at the back page, do you recognize the symbol for
25 Earth First? It's not in color, but normally you see a green

1 fist in the air, with the name "Earth First!" with their
2 motto, which is "No compromise in the Defense of the Earth!"

3 MR. BLOOM: Excuse me, but it says "Defense of Mother
4 Earth!"

5 BY MR. BARTLETT:

6 Q. "No compromise in the Defense of Mother Earth!"

7 A. I've heard it; I have seen this symbol before. I don't
8 know that it's the symbol of Earth First. It's a symbol that
9 someone who aligns themselves with Earth First created.

10 Q. And Earth First within this website describes itself as --

11 MR. BLOOM: Excuse me. First of all, it's not in
12 evidence; and secondly, the witness has said he doesn't
13 recognize it. I object.

14 THE COURT: Let's ask him questions. Question and
15 answer.

16 BY MR. BARTLETT:

17 Q. You are aware that Earth First's self-description is that
18 they are a radical environmental group, correct?

19 A. I guess so. Again, Earth First is people who come
20 together in local areas and agree on something and go out and
21 do it together, and so it's hard to characterize it. It's not
22 a top end organization. There aren't rules for getting
23 involved in it. And the groups are all different in what they
24 actually do.

25 I can only talk about the work I did, and in some ways I

1 think it was radical because it was stepping outside of what
2 was being done at the time. But I don't think it's extreme.
3 I think it's the type of change that I want to see in the
4 world and the type of change that I would like to see -- that
5 I would like to have my daughter inherit, too.

6 So I think that there's a very big difference between
7 radical and extreme.

8 I think that we were radical in doing the things that
9 people weren't doing, that I believe should have been doing;
10 bringing together labor unions, bringing together
11 environmentalists, bringing together economically depressed
12 communities, and working to fight for rights of people who
13 have been disadvantaged and combining a lot of different
14 tactics to be successful. And we were very successful in
15 doing that.

16 But again, I don't think the things that I was involved in
17 was extremist. It was radical, but radical in a very positive
18 way.

19 Q. When you first heard about Earth First, one of their
20 primary trademarks was monkeywrenching, doing civil
21 disobedience that would impact, for example, spiking trees;
22 those types of activity?

23 MR. BLOOM: If I may, Judge, I object. This is
24 further continuation, an attempt to smear Ms. Waters with
25 Disneyland, Statue of Liberty. It's just not right. I would

1 ask the Court to stop it.

2 THE COURT: Well, just a minute.

3 Any response to this? Should I have the jury out on this.

4 MR. BARTLETT: My sole question to this witness is
5 have you ever heard the term monkeywrenching in reference to
6 Earth First activities?

7 THE COURT: You can answer yes or no, and I will see
8 where it goes.

9 **A.** I have heard of monkeywrenching, and I have heard of it
10 being associated with certain Earth First groups. But it's
11 not a term -- monkeywrenching is not something that I
12 participated in; I never saw Briana Waters participate in. We
13 actively campaigned against it because it hurt the people that
14 we were working to work with and to build alliances with.
15 So we weren't interested in participating in that, and we
16 didn't.

17 So I don't think that you can associate the work that we
18 did in Olympia, Washington, with anything else that was done
19 by other Earth First groups in other states. They are all
20 independent.

21 Again, it's not an organization. It's a set of beliefs,
22 and people interpreted those beliefs differently. And our
23 group of my friends, the people that I worked with, actually
24 were vehemently against tree spiking and other things that
25 caused harm to people, and we didn't participate in it, and we

1 actively worked to make sure it didn't happen on any of the
2 campaigns that we worked on.

3 MR. BARTLETT: I have no further questions, Your
4 Honor.

5 MR. BLOOM: I have no questions, Your Honor.

6 THE COURT: You may step down.

7 MR. BLOOM: Next will be Julie Frank, please.

8 THE COURT: Let me have you come forward and raise
9 your right hand and be sworn.

10 JULIE FRANK, called as a witness, duly sworn.

11 DIRECT EXAMINATION

12 BY MR. BLOOM:

13 Q. Could you please tell the jury your full name?

14 A. Julie Elizabeth Frank.

15 Q. Where do you live?

16 A. Olympia, Washington.

17 Q. If I may ask, what do you do for a living?

18 A. I got a new job yesterday.

19 Q. You did?

20 A. Yes. I will be selling and marketing for a small company
21 that installs wind energy projects.

22 Q. Are you married?

23 A. Yes.

24 Q. Do you have any children?

25 A. I have two children.

1 Q. Any of them in this courtroom?

2 A. Yes, there's one over there in the corner, 12.

3 Q. Where did you grow up?

4 A. I grew up in Philadelphia.

5 Q. When did you come to the northwest?

6 A. In 1993.

7 Q. What -- since you've been here, what have you done?

8 A. I worked for a recycling company doing marketing for a
9 while. I raised two children whom Briana babysat for.

10 Q. I'm sorry?

11 A. Briana babysat for my children. And until recently, I was
12 the president of a technology start-up. We were putting
13 together pumps, industrial pumps and renewable energy
14 turbines.

15 Q. Did there come a time in the past couple of years when you
16 spoke with either FBI agents or prosecutors?

17 A. I am going to guess, eight months ago, give or take, two
18 FBI agents knocked on my door one morning.

19 Q. Did they ask you questions?

20 A. Yes.

21 Q. Did you answer their questions?

22 A. I did.

23 Q. Now, do you know Briana Waters?

24 A. I do.

25 Q. Do you see her in the courtroom?

1 **A.** Yes, I do.

2 **Q.** Could you identify her?

3 **A.** Yes, Briana right there.

4 **Q.** How did you come to know her?

5 **A.** I believe I put an ad in the paper, or maybe at Evergreen,
6 for a baby-sitter to take care of my children.

7 **Q.** About what year would that have been?

8 **A.** I believe it would have been sometime in 1999 or early
9 2000.

10 **Q.** Briana responded to your ad?

11 **A.** Yes, she did.

12 **Q.** And did you decide to engage her as a person to take care
13 of your child or children?

14 **A.** I did, And she was a wonderful sitter. We were going
15 through some difficulty with our eldest, who is here. She had
16 a tumor in her femur and was in and out of wheel chairs and
17 body casts for about 18 months. And then I have a younger
18 daughter who's three years younger, and Briana was very
19 helpful during that time.

20 **Q.** Could you describe, as you remember, your interactions
21 with Briana Waters?

22 **A.** Certainly. I didn't bring my kids into the world to
23 ignore them, and so I carefully interviewed people that spent
24 time with my kids and checked their references carefully.
25 Then I spent time with them getting to know them, find out

1 what they think about taking care of children and behavioral
2 issues. And so Briana and I spent quite a bit of time
3 chatting through the couple of years she worked for us. At
4 one time my husband and I decided it was okay to go away for a
5 night, and Briana stayed with the kids, and that was really
6 nice.

7 Q. In general, could you describe your opinion of
8 peacefulness, violence, nonviolence; what is your sense of
9 her, your opinion of her with regard to whether she's a
10 violent person or a nonviolent person?

11 A. Well, she was always good with my kids as far as offering
12 them positive suggestions on how to do things. There was
13 never a threat or punishment. It was always how do you
14 encourage with positivity. And tickling, of course, was on
15 the list of important things.

16 I would trust -- I mean, she took our car and drove them
17 to the library or wherever they needed to go. And I trusted
18 her with the lives of my children.

19 Q. Thank you. I don't have any further questions.

20 CROSS-EXAMINATION

21 BY MR. FRIEDMAN:

22 Q. Good afternoon, Mrs. Frank. My name is Andrew Friedman.
23 I'm one of the prosecutors in this case.

24 I just have a few questions for you.

25 You obviously -- Briana Waters worked for you over the

1 course of a couple years?

2 A. Yes.

3 Q. And you met her boyfriend at the time; is that correct?

4 A. A couple of times probably.

5 Q. Do you recall his name?

6 A. Justin.

7 Q. Justin Solondz?

8 A. I don't know that I ever knew his last name.

9 Q. But you didn't meet many of her other friends from school,
10 did you?

11 A. No.

12 Q. And you didn't meet the people with whom she was involved
13 in environmental work or campaigns or projects, did you?

14 A. No.

15 Q. I am going to show you a series of pictures, and tell me
16 if you know any of those people. They should all appear on
17 your computer screen in front of you.

18 Exhibit 111, someone named William Rodgers. You didn't
19 know him, did you?

20 A. No.

21 Q. Then Exhibit 119, Joyanna Zacher?

22 A. No.

23 Q. Exhibit 118, Nathan Block?

24 A. No.

25 Q. Exhibit 117, Daniel McGowan?

1 **A.** No.

2 **Q.** Exhi bi t 120, someone named Suzanne Savoi e?

3 **A.** No.

4 **Q.** Exhi bi t 116, Stan Meyerhoff?

5 MR. BLOOM: Excuse me a second. I'm going to object
6 -- I don't object to the showing of the photographs. The
7 introduction was people with whom she was involved in
8 activities. That is not --

9 THE COURT: Just show the pictures and see if she
10 knows.

11 MR. BLOOM: I object to the introduction, because
12 that is actually testimony by Mr. Friedman, and that is not
13 our position. It is not our position that she was involved
14 with these people.

15 THE COURT: You've made it clear.

16 BY MR. FRIEDMAN:

17 **Q.** You didn't know this man, did you, Stan Meyerhoff?

18 **A.** No.

19 **Q.** And then Exhi bi t 112, Jenni fer Kolar, you never saw her
20 ei ther?

21 **A.** No.

22 **Q.** Exhi bi t 113, Lacey Phi ll abaum?

23 **A.** No.

24 **Q.** So it's fair to say, isn't it, you never saw Bri ana Waters
25 with any of the people we've just looked at?

1 **A.** No, I certainly didn't.

2 **Q.** We talked a minute ago about, or you talked on direct
3 examination about being interviewed by a couple of FBI agents.
4 You said they came to your door, correct?

5 **A.** Yes.

6 **Q.** And they asked you some questions?

7 **A.** Yes.

8 **Q.** And they asked specifically questions about Briana Waters?

9 **A.** Yes.

10 **Q.** And they also asked you questions about Justin Solondz,
11 correct?

12 **A.** Yes.

13 **Q.** And they asked you questions about an arson that took
14 place at the University of Washington, correct?

15 **A.** Yes.

16 **Q.** You told them that you wouldn't be surprised if Briana
17 Waters knew the people who had committed that arson, didn't
18 you?

19 **A.** I believe that we all have the opportunity to make efforts
20 for social change in our lives, and as a journalist, that is
21 what Briana did. And it's natural that she might have known
22 some of these people through her work making the movie.

23 **Q.** You told them you would not be surprised if she knew
24 people who had committed the arson?

25 **A.** Well, certainly. How else would she have made the movie

1 if she didn't meet some of those people? I don't know that
2 the people in the tree sitting were the same people that did
3 the arsons, but it wouldn't be surprising if some of that --
4 there was overlap in those groups.

5 MR. FRIEDMAN: Thank you very much, Ms. Frank.

6 THE WITNESS: Certainly.

7 MR. BLOOM: Thank you. I have no further questions.

8 THE COURT: All right, you may step down.

9 Next witness.

10 MR. BLOOM: May I request -- the witness would like
11 to stay for two minutes to watch the proceedings. Is there
12 any problem with that?

13 MR. BARTLETT: No objection.

14 THE COURT: She's been excused. She can stay as long
15 as she likes.

16 Let me have you come forward, sir.

17 MR. BLOOM: This is Greg Grove.

18 THE COURT: Just come forward and raise your right
19 hand and be sworn.

20 GREGORY GROVE, called as a witness, duly sworn.

21 THE COURT: Just come around and take the witness
22 chair.

23 MR. BARTLETT: We were never provided notice that
24 Mr. Grove was going to testify.

25 MR. BLOOM: I think I did yesterday. Isn't that

1 true?

2 THE COURT: Is there an issue with him testifying
3 now?

4 MR. BARTLETT: I have no idea who he is. I have
5 never heard the name before.

6 MR. BLOOM: He's a character witness.

7 MR. BARTLETT: I have no objection.

8 DIRECT EXAMINATION

9 BY MR. BLOOM:

10 Q. Could you state your name to the jury, please?

11 A. Yeah, my name is Gregory Allen Ladue-Grove.

12 Q. Could you use the microphone, please?

13 A. Okay. My name is Gregory Allen Ladue-Grove.

14 Q. How old are you?

15 A. I am 49.

16 THE COURT: Have him spell the last name for the
17 record.

18 BY MR. BLOOM:

19 Q. How do you spell your last name?

20 A. G-R-O-V-E. It's a hyphenated name, L-A-D-U-E hyphen
21 G-R-O-V-E.

22 Q. Where do you live?

23 A. I live in Tumwater, Washington.

24 Q. And are you married?

25 A. I am, 29 years.

1 Q. Do you have any children?

2 A. I have two children, both grown, and a granddaughter of
3 about four months ago.

4 Q. Where did you grow up?

5 A. I was born up in Seattle, Washington, over on Magnolia.
6 Part of my youth was in Eatonville with my mom and
7 grandparents. And most of my young high school, junior high,
8 grade school life was down in the Medford, Oregon, area. I
9 went to high school in Ashland, a Community College in Grants
10 Pass. And came back home up here, I can't remember, 15, 20
11 years ago, something like that.

12 Q. Have you been in the military?

13 A. Yes, the 5th Marines, 9th marines, 1975 to 1979. I was a
14 full 351 anti-tank, assault man with the ground unit.

15 Q. Could you stay with the microphone, if you would, please?

16 A. I'm sorry.

17 Q. Sure. What do you do for a living now?

18 A. I drive truck. I'm a truck driver locally within the
19 greater Puget Sound area.

20 Q. What have you done for a living in the past?

21 A. In my younger years, just about anything, but mostly it
22 was around driving truck. I have 18 years of driving truck.
23 In the middle of that I had a job as a GIS mapper for the
24 archaeology office, Office of Archaeology and Historic
25 Preservation. I was also the tribal liaison for that office.

1 Q. Let me stop you there for a moment. Is that for a public
2 entity?

3 A. That's the State of Washington. It's the shiphold office.
4 The term that they use is OAHP.

5 Q. What year was that?

6 A. I went back to truck driving four years ago, and I spent
7 three years working for the state.

8 Q. Just prior to that, just before that?

9 A. Yes. I have been back truck driving for four years, and
10 just prior to that I was working for the state for three
11 years.

12 Q. Okay. Did you have occasion to meet someone named Briana
13 Waters?

14 A. Yes, I did.

15 Q. Do you see her in the courtroom?

16 A. Yes. Right to your left, sitting right there, yes.

17 MR. BLOOM: Let the record reflect that the witness
18 has identified Briana Waters.

19 THE COURT: Yes.

20 BY MR. BLOOM:

21 Q. How did you come to meet her?

22 A. I met Briana a few years before I was working for the
23 state. I am real sketchy on the years. I was -- I belong to
24 the Cowlitz Tribe. I am a tribal member of the Cowlitz Indian
25 Tribe, and I spent a lot of years trying to follow and living

1 and learning traditional value systems within the tribe. I
2 spent a lot of time in the sweat lodge and stuff and had been
3 going to dam relicensing meetings representing the tribe and
4 things like that, and it just so happens I was at the Cispus
5 Center --

6 Q. The what?

7 A. The Cispus Center up on the Cispus River by Randle,
8 Washington, and there was some folks trying to educate people
9 about the value of forests and healthy environment and such,
10 which, you know, is a lot of traditional tribal values with
11 clean water, fish passage, things like that.

12 And Briana was doing a documentary for her school -- she
13 was going to Evergreen College -- and she wanted to sit down
14 and interview me. So that's how I met her, is we started
15 talking about values and about indigenous thought patterns and
16 how elders and people see the forests and see the water and
17 see the fish and that relationship with that. And she was
18 doing a documentary, and I sat and did interviews for her.
19 And my family, too.

20 Q. When you say your family, too, could you tell us about
21 that?

22 A. Briana had a real interest in the idea of fish passage and
23 tribal value systems. And we developed a friendship, and she
24 interviewed my mother. She was there at Chehalis Tribe when
25 there was a traditional drum with an elder by the name of Noah

1 Longcrane there. These were real traditional people, very --
2 you don't come from the outside into these circles. And
3 Briana was very accepted through me because I spent a lot of
4 time with these folks, plus related to some of them. And
5 Briana came around and she was making that documentary and she
6 interviewed folks. She interviewed my mother.

7 **Q.** Was there something special about you introducing her to
8 your mother?

9 **A.** Yes, it was huge. You know, Briana's integrity and the
10 way that she was carrying herself and how she was handling
11 herself, she was one of the few people that I would have come
12 around my family, much less people like Lillian Young, who was
13 the oldest tribal member of the Chehalis Reservation at the
14 time. She was a person that spoke her language. Her mother
15 saw the first coming of Europeans into the Cowlitz Valley. I
16 can't express enough how these were very traditional folks.

17 And Briana, her integrity and her values. I know that
18 she's on trial right now or I wouldn't be here. There was
19 no -- I wouldn't have brought Briana around had I thought that
20 there was any lack of integrity or peacefulness in who she
21 was.

22 **Q.** That's my last question. Do you have an opinion about
23 her, whether or not she's a violent person or a nonviolent
24 person?

25 **A.** My opinion is she's nonviolent. We had a lot of

1 conversations about the violence of the forests, about how you
2 can't take violence and create peace. I knew Briana as a very
3 peaceful person. She always represented herself as such
4 around my family, around my children, around a traditional
5 Lakota tribal drum in the middle of Chehalis.

6 I know her as a peaceful person.

7 MR. BLOOM: I thank you. I don't have any further
8 questions.

9 Maybe the prosecutors have some questions for you.

10 MR. BARTLETT: Nothing, Your Honor.

11 THE COURT: You may step down.

12 MR. BLOOM: Thank you.

13 THE COURT: Next witness.

14 MR. BLOOM: May this witness stay as well?

15 MR. BARTLETT: No objection.

16 THE COURT: Yes.

17 MR. BLOOM: Sarah Wald, W-a-l-d.

18 THE COURT: Just come forward, please.

19 Raise your right hand and be sworn.

20 SARAH WALD, called as a witness, duly sworn.

21 THE COURT: Come around and take the witness chair.

22 DIRECT EXAMINATION

23 BY MR. BLOOM:

24 Q. Could you please state your name? Speak into the
25 microphone, if you would, please, and state your name slowly

1 to the jury.

2 **A.** My name is Sarah Wald.

3 **Q.** Could you spell it, please?

4 **A.** Sarah is S-A-R-A-H, and Wald is W-A-L-D.

5 **Q.** How old are you?

6 **A.** I am 28 years old.

7 **Q.** Right now, where do you live?

8 **A.** I live in Providence, Rhode Island.

9 **Q.** What do you do in Providence, Rhode Island?

10 **A.** I am a graduate student at Brown University.

11 **Q.** Where were you born?

12 **A.** I was born in Ann Arbor, Michigan.

13 **Q.** And did there come a time when you -- how old were you
14 when you left Ann Arbor?

15 **A.** I left Ann Arbor -- I went back and forth from my parents'
16 house in Ann Arbor and my grandparents' house. I moved --

17 **Q.** Where was your grandparents' house?

18 **A.** They live in southern California. And so I went back and
19 forth between their house -- my mother was very sick, which is
20 why I had to go to my grandparents' house -- until I was 17.
21 I moved to Portland, Oregon, to go to college.

22 **Q.** Where did you go to college?

23 **A.** I went to Reed College from 1997 to 2001.

24 **Q.** How long have you been in Rhode Island?

25 **A.** I moved to Rhode Island in the fall of 2003, which is when

1 I started graduate school .

2 Q. Had you been in Portland before that, after school ?

3 A. I stayed in Portland from when I graduated until when I
4 left for graduate school .

5 Q. Are you married or single?

6 A. I am single.

7 Q. Now, do you know a woman named Briana Waters?

8 A. I do know Briana Waters.

9 Q. Do you see her in the courtroom?

10 A. Yes.

11 Q. Indicating over this way. Is that Briana over there?

12 A. That's Briana over there.

13 Q. And do you remember where you met her and when you met
14 her?

15 A. I met Briana -- the first time I really put her face and
16 her name together, was in February of 2001. We were at a
17 meeting together in Portland, Oregon.

18 Q. And what was that meeting about?

19 A. It was a regional meeting for people who were involved in
20 forest campaigns and campaigns to protect forest areas, such
21 as the Watch campaign up in Washington and the campaign to
22 protect the Eagle Creek area in Portland, Oregon, to talk
23 about issues that had come up with sexism and around gender in
24 the different campaigns. So there were people there from both
25 Oregon and Washington.

1 Q. About how many people were at that meeting?

2 A. There was no more than a couple of dozen people. It was a
3 pretty small meeting.

4 Q. What kind of setting was it?

5 A. It was held at a house that was up on a hill, kind of on
6 the west side of Portland, up near Lewis and Clark College,
7 but it wasn't right near the college -- but that area of
8 Portland. And we actually held meeting in a big barn
9 structure that was on that property. It was a pretty
10 comfortable, dry, warm space.

11 Q. I am going to show you a picture. Do you recognize that
12 person?

13 A. That is Lacey Phyllabaum.

14 Q. Now I am going to take that off there. Do you remember
15 meeting her at any time?

16 A. I met Lacey the first time I put my name -- I may have
17 been in the same room with her before, but the first time I
18 really knew that I was meeting Lacey was at that same meeting
19 in February of 2001. She was -- she played quite a prominent
20 role at the meeting. She was doing a lot of the facilitating.
21 It was a two-day meeting. She spoke prominently during the
22 meeting.

23 Q. Did there come a time at the meeting -- do you remember
24 the date of the meeting?

25 A. I believe the meeting was held February 3rd and 4th. It

1 was held the first week of February, for sure. I was
2 starting -- it was the spring semester of my senior year and
3 it was important for me to go to regional meetings at that
4 point because I was graduating college and I was going to be
5 spending less time working with organizations on campus and
6 working more time with organizations in the community. And it
7 was right at the beginning of the semester, as we were getting
8 started for the school year.

9 **Q.** Is there anything else that helps you identify and
10 remember the date, the approximate date of the meeting?

11 **A.** There was a conference at Portland State University that
12 had a name like the global justice conference, that I was
13 helping with. It was a group of Portland State University
14 students, Lewis and Clark College students, and the students
15 worked together on this global justice conference, and the
16 conference was February 16th through 18th. I went and looked
17 through my files. I saved the fliers from the conference, and
18 I remember the meeting was a couple of weeks before the
19 conference.

20 **Q.** Was there any other conference that took place in the same
21 period that helps you identify the date?

22 **A.** That was the only year I went down to an environmental
23 regional conference they held every year at the University of
24 Oregon, and that was held in the last weekend of January. And
25 I remember that meeting was held between when I went to the

1 Eugene conference, which I went with a group of Reed College
2 students, and to the one when I went to this global justice
3 conference at Portland State University. And that was -- I
4 also saved the fliers for that -- was January 27. So I knew
5 it was the weekend after that that I had gone to this meeting
6 in Portland.

7 **Q.** Did there come a time during the meeting at the barn,
8 let's call it, that the couple of dozen people broke into what
9 they might call breakout groups? Is that the phrase that you
10 use?

11 **A.** Uh-huh, yeah. We often -- we went around the circle
12 several times introducing ourselves throughout meeting, but
13 during one point in the meeting we broke into groups, a group
14 of mostly women and a group -- a group of all women and a
15 group of all men. And there was one group that was for women
16 and men who wanted to talk about these issues together.

17 Almost all the women went to the group for the women only.
18 The facilitator was a women, and I think one other woman went
19 to that group. But for the most part, all the women were in
20 that one big breakout group, and so we spent several hours at
21 that point talking about issues that had come up in people's
22 campaign.

23 **Q.** In that breakout group -- was Lacey Phyllabaum in that
24 group?

25 **A.** I don't remember if Lacey was in that group. She was for

1 sure, but I can't quite remember who the two women who went to
2 the other group were. But I know that she was -- when we
3 finished the breakout groups we came back together. We spent
4 most of the meeting in a big group, and so I think it's highly
5 likely she was in the group that had all but two of the women
6 there. There were a lot of women at those meetings. There
7 were more women than men at the meetings. And I can't quite
8 remember who those two women who were at the other group were.
9 But we spent most of the meeting in the big groups and sharing
10 what we come up with in that one time we spent in the breakout
11 groups.

12 **Q.** Did that meeting go for one day or two days?

13 **A.** It was a two-day meeting, so it was all day Saturday and
14 then people stayed and talked and played music on Saturday
15 night and the meeting continued on Sunday. So there was quite
16 a lot of socializing time at the meeting. It was a pretty
17 memorable event.

18 **Q.** And when you say played music, do you have any
19 recollection of Briana Waters being involved in music?

20 **A.** That's why I really remember that she was there. She
21 brought her fiddle down and she played her fiddle. I really
22 love violin music, so I was very excited to see someone bring
23 the fiddle.

24 **Q.** Do you have any connection with violin music?

25 **A.** I played violin as a child until I was probably about -- I

1 played in the school orchestra until I graduated high school.
2 So that was pretty close to when I played violin at that
3 point. I was never very good at it, but I loved hearing
4 people who were very good at playing.

5 **Q.** Is there any doubt in your mind that the first weekend of
6 February of 2001, Briana Waters and Lacey Phillabaum were at a
7 meeting together with about two dozen people?

8 **MR. BARTLETT:** Excuse me, Your Honor. The testimony
9 was a couple dozen.

10 **MR. BLOOM:** A couple of what? A couple of dozen?

11 **THE COURT:** I don't know. Just ask her the question,
12 if she remembers anything. That's your question, I believe.

13 **MR. BLOOM:** I am not so sure what I said, it was
14 different from --

15 **THE COURT:** Do want her to read it back?

16 **MR. BLOOM:** No, I will ask it again.

17 **THE COURT:** Okay.

18 **BY MR. BLOOM:**

19 **Q.** Is there any doubt in your mind that at that meeting, the
20 first weekend in February, Briana Waters was there and Lacey
21 Phillabaum was there? Is there any doubt in your mind?

22 **A.** I have absolutely no doubt that Lacey Phillabaum and
23 Briana Waters were at this meeting that had no more than 30
24 people, but probably closer to 20 people at it, for two days,
25 where we spoke repeatedly within the group and met everyone

1 there.

2 MR. BLOOM: Thank you. I don't have any further
3 questions.

4 MR. BARTLETT: No questions, Your Honor.

5 THE COURT: You may step down.

6 Next witness.

7 Let me have you come forward, if you would, and raise your
8 right hand and be sworn.

9 DARIA ELIZABETH WRUBEL, called as a witness, duly sworn.

10 THE COURT: Just come around and take the witness
11 chair.

12 DIRECT EXAMINATION

13 BY MR. BLOOM:

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Have you traveled up here today?

17 THE COURT: Have her identify herself.

18 BY MR. BLOOM:

19 Q. Could you please state your name and spell your name?

20 A. Daria D-A-R-I-A, Elizabeth, E-L-I-Z-A-B-E-T-H, Wrubel,
21 W-R-U-B-E-L.

22 MR. BARTLETT: Your Honor, once again, this is a
23 witness we've never been notified about. We have no notice of
24 this.

25 MR. BLOOM: That's not true. This is a notice I gave

1 him over the weekend.

2 THE COURT: If you look at the witness list, I think
3 she's listed as 32.

4 MR. BLOOM: Excuse me a second.

5 THE COURT: Is that the same witness?

6 MR. BLOOM: My apologies. This is also a character
7 witness. If there's any objection, I will do whatever the
8 Court directs.

9 MR. BARTLETT: It's 2:15, Your Honor. I would like
10 to be heard outside the presence of the jury.

11 THE COURT: All right. Let me have you take the
12 afternoon recess at this time. I will take this matter up,
13 and then you'll be back in here.

14 Don't discuss the case. Leave your books on your chair.
15 (Jury not present.)

16 THE COURT: All right, you may be seated.
17 Should the witness be out of the room?

18 MR. BARTLETT: I would ask that.

19 THE COURT: Let me have you step down and remain
20 outside.

21 (Witness departed courtroom.)

22 MR. BARTLETT: Our objection is twofold. First of
23 all, we didn't receive prior notice of this witness. And more
24 importantly, I wouldn't object that much if it's a character
25 witness. From my count, this is the sixth character witness

1 that we are calling. I think it is cumulative. We've heard
2 that a lot of people think very highly of her. This is just
3 cumulative.

4 THE COURT: Well, let me have Mr. Bloom respond to
5 that.

6 I have two witness lists here. I have one in pencil, and
7 it says 2/26, and of course her name is not on this list. I
8 don't know if number 32 on the witness list submitted at the
9 beginning of the trial, it says Dana Wrubel, is that the same
10 person?

11 MR. BLOOM: Yes.

12 THE COURT: This says Dana, and I believe she said
13 her name was Daria or something like that.

14 MR. BLOOM: It is in handwriting, Judge?

15 THE COURT: I don't have anything about a name --
16 yes, Daria, her name is on this list that was submitted today.
17 Do you have that?

18 MR. BARTLETT: I never got that, Your Honor.

19 THE COURT: Pat, you gave this to me. Did you give
20 everybody a copy?

21 THE CLERK: No, I thought Mr. Bloom did that.

22 THE COURT: All right, let's do this. Let me have
23 you look at the list -- I assume this is the list you are
24 intending to call today?

25 MR. BLOOM: Yes. Let me give you all the names.

1 THE COURT: Well, the government is claiming they
2 didn't get it, or you gave it to Pat, but Pat didn't
3 disseminate it or something. So let's find out, let them take
4 a look at the list.

5 Let me have you respond to the question as to whether all
6 of these witnesses will come and say that she's a person that
7 they know of as to have a reputation of nonviolence. Is that
8 the thrust?

9 MR. BLOOM: That's not the sole purpose of this
10 particular witness.

11 THE COURT: Which one, could you identify solely for
12 that? That's where the distinction's from.

13 MR. BLOOM: For character?

14 THE COURT: If they have something else to add to
15 that about something else, that's different; that becomes a
16 factual thing.

17 So let me have you -- we'll take the recess. I will have
18 you look at it and make those kind of identifications, then I
19 can tell you something, what I think about it. Okay?

20 We are at recess.

21 THE CLERK: All rise, court is in recess.

22 (Afternoon recess.)

23 THE COURT: You may be seated.

24 All right, we were talking about witnesses, how many of
25 them are purely character witnesses, and what's the end of the

1 line on that kind of witness, other than fact witness. I have
2 a new list here that's been provided. So I guess I am asking
3 both of you about this list. These are folks coming the rest
4 of the afternoon, is that right?

5 MR. BLOOM: Yes. And I want to say that none of
6 these witnesses is just purely a character witness. Each one
7 has important facts to talk about that relate to the issues of
8 this case.

9 MR. BARTLETT: I have no objection to those fact
10 witnesses getting on and testifying as to those facts, and it
11 should end there. They shouldn't be able to bootstrap
12 themselves by having a fact witness get on, talk a few seconds
13 about a fact, and then have them launch into more character
14 witnesses. These are eight additional witnesses. We've
15 already heard from five character witnesses.

16 The Court has had a chance to look at the cases. You know
17 they are not allowed to have just endless, endless, endless,
18 endless calling of character witnesses.

19 THE COURT: I understand that. You are talking about
20 an additional question, as to what do you think about
21 nonviolence; I suppose that is the issue. You are cutting a
22 fine line on the matter.

23 MR. BARTLETT: They just shouldn't be allowed to ask
24 the questions. They should get their facts on, and that
25 should be the end of it.

1 THE COURT: You made the objection, and the record is
2 made, and I have to see where that goes and where it leads to.
3 If it leads to something that's prolonged, then I would agree.
4 If it's strictly on the character thing, you are not parading
5 112 folks in to say the same thing. That's what I am talking
6 about when I say character.

7 MR. BLOOM: You've seen it, with the exception of
8 yesterday's witness who did go on for a while, Ms. Troxel, the
9 witnesses you've seen I've just asked a few questions. I
10 haven't prolonged it.

11 THE COURT: All right, are we ready now? I guess we
12 had Ms. Wrubel on.

13 Bring in the jury and bring her in.

14 Ms. Wrubel, do you want to bring her in?

15 (Jury present.)

16 THE COURT: All right, you may be seated. Questions.

17 MR. BLOOM: I don't know how far we got, but let's
18 kind of start over.

19 BY MR. BLOOM:

20 Q. Could you give the jury your name, please?

21 A. Dari a Elizabeth Wrubel.

22 Q. Spell the last name.

23 A. W-R-U-B-E-L.

24 Q. How old are you?

25 A. Thi rty-four.

1 Q. Where do you live?

2 A. I live in Berkeley, California.

3 Q. And are you married?

4 A. I am.

5 Q. Do you have any children?

6 A. I have an 18-month-old son.

7 Q. Do you know Briana Waters?

8 A. I do.

9 Q. Let me go back. What do you do for a living?

10 A. I teach nutrition and gardening at an elementary school in
11 Hayward, California.

12 Q. Do you know Briana Waters?

13 A. I do.

14 Q. Is that she over there?

15 A. It is.

16 Q. For how long have you known her?

17 A. We -- well, we met, I think, in December of 2001. We had
18 both been at Lark in the Morning music camp together in the
19 summer of 2001, but I don't really remember meeting her there.
20 But we did meet again in December, and then she moved in with
21 me at the beginning of February in 2002. I owned a house in
22 Oakland, California, and she was my tenant and my roommate.

23 Q. Could you describe how you remember that she moved in
24 February of 2002?

25 A. Well, I had just bought the house. It was the first house

1 I ever bought, so I remember distinctly it was December 5,
2 2001, that I closed escrow; it was a very exciting day. And
3 Briana came up in December to look for a place to -- or came
4 down, I guess -- to look for a place to live. We were
5 introduced by my friend Maleca, and I remember she needed to
6 go back to pack in January.

7 **Q.** Back to where?

8 **A.** Back to Olympia to get her things and drive down, and so
9 she moved in in February.

10 **Q.** And how would you describe your interactions with her when
11 she moved down?

12 **A.** Well, she became a very good friend very quickly. She was
13 just a pleasure to live with, a very generous and warm
14 roommate. I was really impressed at how she handled any
15 conflict in our household. If she thought that I was upset
16 about something or that maybe I had misunderstood anything
17 that she said, she was very quick to ask me about it and to
18 sit down calmly and talk about: How can we work this out? I
19 really want to make sure that you feel cared for and that we
20 understand each other and we don't have any misunderstandings.

21 So we became really good friends.

22 **Q.** And you know what she's accused of; is that correct?

23 **A.** I do.

24 **Q.** Did that in any way deter you from coming up to testify on
25 her behalf?

1 **A.** Not at all. I knew as soon as I heard what the
2 accusations were that they must be false, knowing her as I
3 did. And I have been a really strong supporter ever since. I
4 have donated money. I have helped care for Calliope when
5 Briana needed to meet with you. I have, you know, I've been
6 more than willing to come up here even though I had to take
7 time off from work and be away from my son because I know what
8 a good person she is.

9 MR. BLOOM: I don't have any further questions, thank
10 you very much. I don't know if they do or not.

11 MR. BARTLETT: Nothing, Your Honor.

12 THE COURT: All right. You may step down.

13 MR. BARTLETT: Your Honor, I renew my objection.
14 This last witness was strictly a character witness.

15 MR. BLOOM: Excuse me.

16 THE COURT: I understand what you are saying. She
17 came down and she moved in with her. That doesn't go to the
18 ultimate issue in the case. So what I am trying to do is get
19 you to limit the testimony either as it goes to the factual
20 matters of issues in the case or a character witness.

21 MR. BLOOM: Each of the witnesses I am going to call
22 have factual things to talk about and they also know her. I
23 want to be able to ask traditional character questions.

24 THE COURT: Bring in the witness, and just remember
25 what I will accept.

1 MR. BLOOM: Just go over there, thank you.

2 JAY SCOTT DOANE, called as a witness, duly sworn.

3 DIRECT EXAMINATION

4 BY MR. BLOOM:

5 Q. Could you state your name, please, and spell your last
6 name for the jury, please?

7 A. Jay Scott Doane. D-O-A-N-E.

8 Q. When did you come to town this week?

9 A. I think our plane landed at 10:30.

10 Q. Could you speak a little louder?

11 A. 10:30 a.m.

12 Q. Would that be today?

13 A. Yeah.

14 Q. Now how old are you?

15 A. Forty-three.

16 Q. Where do you live?

17 A. San Francisco, California.

18 Q. What do you do for a living?

19 A. Computer programmer.

20 Q. How long have you done that?

21 A. Hmm, 15 years.

22 Q. Are you involved in the music world?

23 A. Yeah, I play the violin.

24 Q. For how long have you done that?

25 A. Same amount of time.

1 Q. I am sorry?

2 A. About the same amount of time, 15 years.

3 Q. Do you know Briana Waters?

4 A. Yes.

5 Q. Do you see here in the courtroom?

6 A. Yes.

7 Q. Could you identify her, please, point to her?

8 A. She's sitting over there.

9 MR. BLOOM: Indicating Briana Waters.

10 BY MR. BLOOM:

11 Q. I want to take you back to the fall of 2001. Do you
12 remember seeing Briana Waters at about that time, in the Bay
13 area?

14 A. Yes, I do.

15 Q. Could you describe the circumstances?

16 A. Yes. She flew down for a week. She stayed at my
17 apartment some of the time, maybe most of the time, in a spare
18 bedroom I had. And she was -- basically, I introduced her to
19 some fellow musicians, showed her around town a bit. And I
20 have a recollection of us going to -- at least one place to
21 find a venue for her to play Watch, her recently made video.

22 Q. Did you say to play Watch?

23 A. To -- yeah, to show it.

24 Q. To screen it?

25 A. To screen it, yeah.

1 Q. Did you ever see it?

2 A. Yeah, I have a copy.

3 Q. Are you saying that one of the reasons she visited was to
4 try to get her video screened?

5 A. Oh, absolutely. That was one of the highest priorities.

6 Q. Was she involved in any -- so far as you know, did you
7 have any discussions with her about any violent activities?

8 A. No.

9 Q. Have you ever had any discussions with her about any
10 violent activities?

11 A. No.

12 Q. Now, that week that she was there, in the Bay area, were
13 there any music events that you attended together or
14 participated in together?

15 A. Yeah, I believe. I don't have a clear recollection, but
16 there were at least one jam session that we went to with some
17 of my friends. I think it was actually at my apartment.

18 Q. You know what she's accused of; is that correct?

19 A. I don't know the exact counts, but I have a good idea of
20 what she's accused of.

21 Q. She's accused of committing arson, you know that?

22 A. Right.

23 MR. BLOOM: Judge, I just have one question I would
24 like to ask, a character question, if I may.

25 THE COURT: Ask it.

1 BY MR. BLOOM:

2 Q. Do you have an opinion -- how many times have you seen
3 Briana Waters in your life?

4 A. Hundreds.

5 Q. Have you formed an opinion about whether or not she is a
6 violent person or a nonviolent person?

7 A. Yes.

8 Q. What is that opinion?

9 A. She's a nonviolent person.

10 MR. BLOOM: I don't have any further questions.

11 THE COURT: All right.

12 MR. BARTLETT: Nothing, Your Honor.

13 THE COURT: You may step down.

14 Next witness.

15 I will have you come forward, if you would, and raise your
16 right hand and be sworn.

17 LAWSON DUMBECK, called as a witness, duly sworn.

18 THE COURT: Come around and take the witness chair.

19 DIRECT EXAMINATION

20 BY MR. BLOOM:

21 Q. Could you please state your name and spell both the first
22 and last name?

23 A. My name is Lawson Dumbeck.

24 Q. Use the microphone, if you would, please.

25 A. Lawson Dumbeck; L-A-W-S-O-N, D-U-M-B-E-C-K.

1 Q. How old are you?

2 A. I am 44.

3 Q. Are you married or single?

4 A. I am married.

5 Q. Do you have any children?

6 A. I have one daughter, a seven-year old.

7 Q. Are you employed?

8 A. I am employed as an assistant attorney general by the
9 State of Washington.

10 Q. And what does that involve, what kind of work do you do?

11 A. I am a lawyer, and I advise the State of Washington,
12 Department of Transportation, on labor and personnel matters
13 primarily.

14 Q. How long have you had that employment?

15 A. It's been a short period of time that I have been with
16 them, just two months, and I have worked for them also as a
17 clerk in the past.

18 Q. A clerk?

19 A. Law clerk in the past.

20 Q. I am missing the last couple of words.

21 A. Oh, excuse me. A law clerk.

22 Q. In the past?

23 A. In the past.

24 Q. That's what I was missing. Thank you.

25 Prior to that what kind of work did you do, or what did

1 you do?

2 **A.** I was in private practice, and I did appellate work in the
3 courts of appeal.

4 **Q.** In the state court or the federal court or both?

5 **A.** Both.

6 **Q.** Now, did there come a time when you met someone named
7 Briana Waters?

8 **A.** Yes, I did.

9 **Q.** Do you see her in the courtroom?

10 **A.** Yes, I do.

11 **Q.** Could you point her out, please?

12 **A.** She's sitting next to that man right there.

13 MR. BLOOM: Indicating Briana Waters.

14 BY MR. BLOOM:

15 **Q.** What were the circumstances of how you met her?

16 **A.** She appeared in my house. My wife teaches violin/fiddle
17 and she was a student of my wife's. We became friendly. She
18 was an excellent musician and had just a great way about her,
19 a very good personality, and so we became friends that way.

20 **Q.** Were there any further dealings that Briana Waters had
21 with you and members of your family?

22 **A.** Oh, yes. She would take care of my daughter when my
23 daughter was very young, and I developed a trust of Briana and
24 gotten to know her, so she was, I think, probably my
25 daughter's first baby-sitter. And really the, you know, the

1 nervous parents, the first time you step out, you want to give
2 your daughter to someone you trust. We had developed that
3 with Briana. So we really entrusted her with the most
4 precious thing that we had.

5 **Q.** Now, did she spend time with you and your wife in the
6 year's -- well, when did she spend time with you and your
7 wife?

8 **A.** From, I would say, late 1998 until 2002, we interacted
9 with her the most. There is a vibrant musical community in
10 Olympia, and we introduced Bri to that. We called Briana Bri.
11 And we watched her, you know, sort of get her wings as a
12 musician there and interact with those people and, you know,
13 just sort of light up the musical community, as she developed
14 her skills. And I had the honor of playing with her on her
15 first professional gig -- I think it was first professional
16 gig -- at Evergreen State College. And, you know, just having
17 seen over the years her go from sort of a beginning student to
18 playing just, you know, fabulously and making the music
19 together was something that was very meaningful to me.

20 **Q.** Do you ever recall talking about or advocating any kind of
21 violence?

22 **A.** Absolutely not. It would have been shocking to me if she
23 had.

24 **Q.** Is it fair to say that you are saying that the time you
25 spent with her did not in any way involve any kind of

1 violence?

2 **A.** In no way whatsoever.

3 MR. BLOOM: I have no further questions.

4 MR. BARTLETT: Nothing, Your Honor.

5 THE COURT: You may step down.

6 Next witness.

7 MR. BLOOM: He's going to get the witness who is his
8 wife.

9 THE COURT: Is her testimony the same?

10 MR. BLOOM: Except in more detail about the music.

11 What's the problem? Why can't we call our witnesses? You
12 let them call their witnesses. Why can't we call our
13 witnesses.

14 THE COURT: Don't be yelling out when I am asking you
15 a question about anything. Now, if you want to address me,
16 you had better address me properly.

17 MR. BLOOM: Yes, sir. I was addressing the standing
18 up --

19 THE COURT: You were talking to me.

20 Step out for a minute, please.

21 (Jury not present.)

22 THE COURT: Now, let me say this. I raised the
23 question, I have raised it all along, about duplication, folks
24 saying the same thing. My question to you, what is different
25 in this witness's testimony than her husband, and that's when

1 you started shouting at me.

2 MR. BLOOM: I am sorry for shouting at you.

3 THE COURT: Now, tell me, if you will, what's
4 different in this testimony?

5 MR. BLOOM: That she is another fact witness who will
6 testify to what it was that Briana Waters was doing in the
7 period of the alleged conspiracy. That she is a witness who,
8 although she will testify to the same thing now, they have
9 called Lacey Phillabaum as a fact witness, and they have
10 called Jennifer Kolar as a fact witness. They are testifying
11 to the same thing. There's nothing wrong with that.

12 THE COURT: I understand that, but that's going to
13 the elements and the charges against this defendant. Here we
14 are talking about playing the violin and other things.
15 Granted, she may be an excellent musician. That's not the
16 issue here.

17 I am saying, if that's what it's about and that
18 interaction and baby-sitting, you are doing the same thing
19 over and over again. It's of no benefit here; it's prolonging
20 the case unnecessarily. That's what I am saying.

21 If it's purely a character witness, her husband has
22 testified to that, what he thinks of her, and I assume her
23 testimony is exactly the same. So now we are going to talk
24 about playing the violin again. Is that what we are going to
25 talk about again?

1 MR. BLOOM: About how Briana Waters was spending her
2 time in the period of the alleged conspiracy. That's --

3 THE COURT: Would they be talking about the same
4 period of time in the same way, is what I am asking you?

5 MR. BLOOM: Yes, of course.

6 THE COURT: Then I don't need that testimony.

7 MR. BLOOM: Well, you don't need it, but we do.

8 THE COURT: I am not going to let you have somebody
9 come in and say the exact same thing. If you bring in a
10 witness that says the same thing, I am going to tell the jury
11 to disregard it.

12 MR. BLOOM: If I may say this, as I pointed out, they
13 were allowed to, and they did, bring in not one but two
14 witnesses.

15 THE COURT: I understand your objection, but --

16 MR. BLOOM: Can I talk?

17 THE COURT: -- are you going to let me control this
18 courtroom, or are you going to stand up and forever tell me
19 how I should do this; or are you going to accept my rulings as
20 I give them and move on? Are you going to do that?

21 MR. BLOOM: I am going to accept your rulings, but
22 when I am speaking, I would like to be able to be permitted to
23 finish what I am saying.

24 THE COURT: You are never through, Mr. Bloom.

25 MR. BLOOM: I am sorry?

1 THE COURT: Finish.

2 MR. BLOOM: What I am saying is they are entitled to,
3 and they have, called fact witnesses to testify to the same
4 things. A party is permitted to do that unless it gets to be
5 like ten witnesses testifying to the same thing.

6 What Mr. Dumbeck has testified to, and Anthea Lawrence
7 will testify to, are two witnesses to testify as to what
8 factually Briana Waters was doing during the period of the
9 conspiracy.

10 We're not talking about ten witnesses. We're not talking
11 about over and over again. We are doing exactly what the
12 Court has permitted the prosecution to do; call more than one
13 witness about fact, about the facts of the case. That's what
14 this is about.

15 Now, if they also happen to like her and trust her, if you
16 want to tell the jury to disregard nice things that people say
17 about her, well, that's the court's prerogative. But these
18 are fact witnesses, and I want to call them as fact witnesses.
19 It's not the same thing over and over again.

20 THE COURT: They are fact witnesses, but fact about
21 what is the issue here.

22 MR. BLOOM: That she was not involved in any illegal
23 activity, so far as these witnesses knew, during the period of
24 the alleged conspiracy, period.

25 MR. BARTLETT: That description, Your Honor, is the

1 exact description of what a character witness is.

2 MR. BLOOM: Of course it is not.

3 THE COURT: I guess you and Mr. Fox are together, but
4 I don't know if you gather on some of these things or not.

5 MR. BLOOM: Mr. Fox thinks I should not tell this to
6 the Court. Well, I am telling this to the Court. It is
7 important for the record and for me to convince the Court.

8 THE COURT: You have made the record, and you have
9 convinced me that her testimony is the same as her husband's.
10 That's enough. Now move on to something different.

11 MR. BLOOM: So are you saying if she's going to
12 testify as to what Ms. Waters was doing -- not what a good
13 person she was, but what she was doing during the
14 conspiracy -- that I cannot call that witness?

15 THE COURT: You have told me that her testimony would
16 be the same: she worked for them, she babysat, she played the
17 violin, she was her teacher. All of that, that's got nothing
18 to do with this case. That's the same thing over again.
19 Unless you've got something going to some other fact, her
20 husband has said it.

21 So how many folks are you going to bring before this court
22 to say that they have had contact with her, and all of that
23 contact with her has been nonviolent?

24 MR. BLOOM: Judge, you are missing what I am saying.
25 I have said it, and I will say it again. It's not about that

1 she's nonviolent. It's about during the period that they knew
2 her, she was not talking about conspiracy to commit arson or
3 any other crimes. It is a fact witness that addresses the
4 allegations made in the Count 1 of the indictment, where they
5 describe a broad, far reaching conspiracy involving 17 arsons
6 with various people --

7 THE COURT: Bring her on.

8 MR. BLOOM: -- and you have permitted them to put in
9 evidence --

10 THE COURT: Enough talk. You bring her on, we'll
11 see.

12 MR. BLOOM: Okay.

13 THE COURT: See if she says the same thing her
14 husband says. Okay.

15 (Jury present.)

16 THE COURT: You may be seated.
17 Have him bring in the next witness.

18 I will have you come forward, ma'am, if you would, and
19 raise your right hand and be sworn.

20 LAURIE MEEKER, called as a witness, duly sworn.

21 THE COURT: Just come here and take the witness
22 chair.

23 DIRECT EXAMINATION

24 BY MR. BLOOM:

25 Q. Good afternoon. Could you please tell the jury your full

1 name and spell your name for the jury, please? And if you
2 could use the microphone, that would be good.

3 **A.** Good afternoon. My name is Laurie Meeker, L-A-U-R-I-E,
4 last name Meeker, M-E-E-K-E-R.

5 **Q.** How old are you?

6 **A.** I am 50 years old.

7 **Q.** Do you have -- are you employed?

8 **A.** Yes. I work at the Evergreen State College. I am a
9 college professor.

10 **Q.** Could you use the microphone, if you would? Pull the
11 microphone to you.

12 **A.** Certainly.

13 **Q.** Thank you.

14 What kind of professor?

15 **A.** College professor at the Evergreen State College.

16 **Q.** How long have you been there?

17 **A.** Since 1989.

18 **Q.** What did you do before that?

19 **A.** Before that I lived in Portland and worked at the Portland
20 Art Institute, Portland Art Museum, and taught some film
21 classes there.

22 **Q.** And you say taught film classes. Are you in a particular
23 department at Evergreen?

24 **A.** We don't actually have departments, but I am in the
25 expressive arts program planning area, so I teach media

1 studies primarily. And we do interdisciplinary studies there,
2 so we also have some disciplinary programs like a media
3 program, called media works.

4 Q. For how long have you done that?

5 A. Well, since I started at Evergreen in 1989, I have been
6 teaching in that area.

7 Q. And were you teaching there -- do you know Briana Waters?

8 A. Yes, I do.

9 Q. Do you see her in the courtroom?

10 A. Yes, I do.

11 Q. Could you point her out, please?

12 A. That's her right over there.

13 Q. Thank you. Did there come a time during your teaching
14 tenure that you came to meet Briana Waters?

15 A. Could you repeat that?

16 Q. Did there come a time when you, while you were teaching at
17 Evergreen, that you met Briana Waters?

18 A. Yes. She was a student in the media works program. And
19 at Evergreen, it is year-long program, so the students take
20 that full-time. That's the only thing they take, so we get to
21 know our students fairly well.

22 Q. Would you describe her; were you an advisor or teacher, or
23 how would you describe your relationship with her?

24 A. I was teaching that program. There were two of us. So I
25 was her proffer while she was a student in my class. And I

1 also supervised her work directly. The first quarter my
2 colleague supervised her work. In the second and third
3 quarter I was her faculty supervisor, so that means that I was
4 responsible for evaluating her work and meeting with her
5 individually, as well as interacting in the classroom with
6 other people.

7 **Q.** How was your relationship with her?

8 **A.** Cordial, professional, student-teacher relationship.

9 **Q.** Did there come a time when she got involved in a
10 particular media project?

11 **A.** Yes. In the spring quarter, all the students had the
12 opportunity to develop their own projects, and so that was the
13 time when she started to develop a documentary. And as I
14 recall -- and this is true for every spring quarter in media
15 works, the students develop a proposal and do some research
16 and start the project development, and I believe that her
17 project Watch was started at that time.

18 **Q.** You say watch; is that the word you used?

19 **A.** I believe that's the name of the documentary.

20 **Q.** Could you describe, as you understood it, what it was she
21 was doing with that project?

22 **A.** As I recall -- well, it was in initial development at that
23 time, so she was -- she was doing research about the Gifford
24 Pinchot National Forest, about forest preservation, and I
25 think it was in initial development at the time. So I think

1 she was doing mostly research and some initial shooting for
2 the project.

3 **Q.** What was the interaction between you and Ms. Waters with
4 regard to that project?

5 **A.** I evaluated her proposal and probably talked to her about
6 some of the ideas. I don't have a lot of memory about
7 specifics around where the project -- how the project was
8 developing, except for the sort of general topic of forest
9 preservation and protecting old growth forests in the national
10 forest.

11 **Q.** Did it work so that there were periodic updates or you had
12 discussions with her about how the project was going?

13 **A.** I think so. But as I said, it was in, you know, the
14 initial phase of development. So we probably had critiques
15 during the program where she might have shown some footage,
16 but I think it was just in its beginning phases. And after
17 she was out of media works, she continued to work on it. I
18 believe we had one or two meetings about it after that, just
19 as providing support and encouragement for the project.

20 **Q.** Do you remember whether or not she finished the project
21 while she was still in school, or did she finish it after she
22 graduated?

23 **A.** I don't remember.

24 **Q.** Did there come a time when you viewed either a work in
25 progress or a final cut of the documentary?

1 **A.** I think I saw the work in progress, but I don't believe I
2 saw the final version of it.

3 **Q.** Okay.

4 **A.** I don't remember seeing one.

5 **Q.** In your dealings with her, were there any problems?

6 **A.** No problems. She was a responsible student. She was
7 probably one of the best students I have had. She followed
8 the rules. Even though we don't have grades at Evergreen, we
9 have high standards for getting work in on time, and she did
10 all of that really well. She was enthusiastic and engaged as
11 a student. And I just remember her as being really sweet; a
12 sweet, nice person to work with.

13 **Q.** Is that campus, the buildings in that campus -- are they
14 all pretty much open 24-hours a day, seven days a week or are
15 they locked? How do you remember how the facilities are
16 managed?

17 **A.** It depends on the facility. Our building, the
18 communications building, we had -- we have regular staffed
19 hours, but because it's kind of isolated, it closes at a
20 certain time. It closes at 9 or 10 or 11:00 at night, and
21 it's locked and closed after that.

22 **Q.** I assume in that building there is some expensive
23 equipment that would need to be secured, is that fair to say?

24 **A.** Yes.

25 **Q.** Now, can someone reserve a room for use at off hours or

1 business hours?

2 **A.** Yes.

3 **Q.** How would one do that?

4 **A.** There's a process for -- once students have been in a
5 media program and become proficient with the equipment, their
6 ideas are put onto a list through media loan, which is part of
7 the library, and so they can check out a key and have access
8 to the equipment. There were -- at any of the suites, that
9 were 24-hour access with a key access.

10 **Q.** You would have to get a key from someone?

11 **A.** During business hours at media loan, yes.

12 **Q.** So in order to do that, you would have to go to a person,
13 an employee at Evergreen, and say I want to use the room, and
14 my name is so-and-so, and can I have a key?

15 **A.** That's right. You'd have to be a student in good
16 standing, and that means that you return equipment regularly
17 and don't check it out over your deadlines and so forth.

18 **Q.** If you were not a student any longer, could you check out
19 a room?

20 **A.** No.

21 **Q.** When somebody would do that, would there be some kind of
22 record kept that that happened?

23 **A.** Yes.

24 **Q.** Did that have to do with just plain security, right?

25 **A.** Yes, and keeping track of the equipment and keeping things

1 in good working order. That's correct.

2 Q. Okay. I don't have any further questions. They may or
3 not. Thank you very much.

4 A. Thank you.

5 CROSS-EXAMINATION

6 BY MR. BARTLETT:

7 Q. The description that you talked about, checking out a
8 room, refers to the building that you work in, correct?

9 A. Yes. That building, and also the library building where
10 some of the other media equipment is housed. So it refers to
11 both buildings.

12 MR. BARTLETT: Thank you.

13 THE COURT: This witness can be excused?

14 MR. BLOOM: I don't know if they are finished.

15 MR. BARTLETT: No further questions.

16 THE COURT: You may step down.

17 Let me have you step up here and raise your right hand and
18 be sworn.

19 GARY VARNELL, called as a witness, duly sworn.

20 THE COURT: Take the witness chair.

21 DIRECT EXAMINATION

22 BY MR. BLOOM:

23 Q. What is your name?

24 A. Gary Varnell.

25 Q. Could you spell that, please, for the jury?

- 1 **A.** Yes. G-A-R-Y, V-A-R-N-E-L-L.
- 2 **Q.** How old are you?
- 3 **A.** I am 34.
- 4 **Q.** Are you married or single?
- 5 **A.** Single.
- 6 **Q.** Where do you live?
- 7 **A.** In Lacey, Washington.
- 8 **Q.** Where is Lacey in relation to, let's say, Olympia?
- 9 **A.** It's right next to Olympia.
- 10 **Q.** Could you use the microphone?
- 11 **A.** Yes. It's right next to Olympia.
- 12 **Q.** Thank you.
- 13 And what do you do for a living?
- 14 **A.** I am a graphics artist.
- 15 **Q.** Graphics artist, did you say?
- 16 **A.** Yes.
- 17 **Q.** What does that mean?
- 18 **A.** I do graphics art, like 3D animation, video editing, and
- 19 then also computer programming.
- 20 **Q.** For how long have you done that?
- 21 **A.** Over ten years.
- 22 **Q.** Were you doing that in -- obviously, you were doing
- 23 that -- well, what year did that begin? Ten years ago?
- 24 **A.** Yeah, ten years ago.
- 25 **Q.** Did you come to know somebody named Briana Waters?

1 **A.** Yes.

2 **Q.** Do you see her in the courtroom?

3 **A.** Yes, I do.

4 **Q.** Could you identify her?

5 **A.** Yes, she's sitting in the chair right over there.

6 **Q.** Are you in the world of environmental work?

7 **A.** Me personally?

8 **Q.** Yes.

9 **A.** No.

10 **Q.** How did you come to meet Briana Waters?

11 **A.** She was working at the mall, at a company called Picture
12 It. And she was working with Photoshop, and I had been
13 working with Photoshop for a long time and just struck up a
14 conversation, and we became friends after that.

15 **Q.** You say working at the mall. Was she employed at that
16 place or was she using the equipment?

17 **A.** She was employed.

18 **Q.** And you struck up a conversation with her?

19 **A.** Yes. She was doing some work in Photoshop, doing some
20 photo retouching.

21 **Q.** What did you talk about with her?

22 **A.** Mostly technical aspects of Photoshop.

23 **Q.** Did you come to learn from her that she was working on a
24 particular project?

25 **A.** That was before she was working on any particular project.

1 Like the Watch video, I assume is what you are talking about?

2 Q. Yes, I am.

3 A. It was prior to that.

4 Q. Did there come a time when she discussed with you working
5 with you, or you working with her, on the Watch video project?

6 A. Yes.

7 Q. Can you remember what year that was?

8 A. Not -- I can look and see.

9 Q. Did you bring with you -- did I ask you to bring with you
10 a printout that would reflect the work that you did on the
11 Watch video project?

12 A. Yes, you did.

13 Q. Have you done that?

14 A. Yes, I have.

15 Q. If looking at that refreshes your recollection, feel free
16 to look at it.

17 A. Yes, it was in 2001.

18 Q. Okay. And what part of 2001?

19 A. Around March. We discussed the project prior to doing any
20 computer work. All I have with me are computer printouts of
21 when files were created, when we logged video footage, that
22 type of stuff.

23 So we would have discussed the project prior to that.

24 Q. About how long prior to that, would you say?

25 A. My guess would be maybe a year prior to that.

1 Q. You say a year?

2 A. Yeah, possibly.

3 Q. So is it fair to say we are describing a collaboration
4 that began with general conversations about how to get into
5 it?

6 A. Yes.

7 Q. And your recollection is that it was maybe a year before
8 the actual editing was done that you had these first
9 discussions?

10 A. Yes, something like that.

11 Q. How often before you actually got to the editing -- about
12 how many times would you say you and Ms. Waters discussed the
13 project?

14 A. I can't recall exactly. I know that she -- I offered to
15 help with the editing of the project, so, you know, she let me
16 know when she was filming and kind of what she was doing, kept
17 me, you know -- kept me up-to-date as to what was going on and
18 when we would actually, you know, start working on the
19 project.

20 Q. Did you understand more or less what the project was
21 about, what the subject matter was?

22 A. Yes.

23 Q. What was that?

24 A. About deforestation mostly.

25 Q. And the word "Watch," where did that come from? Do you

1 know what that related to?

2 **A.** Yes, Watch Mountain. It was a particular mountain that
3 was proposed to be clear-cut, that would have had
4 consequences, and so they were protesting to stop.

5 **Q.** Now, when did you actually begin the editing?

6 Let me withdraw that?

7 What does editing involve? Describe that to the jury.

8 **A.** First you have to go through all the footage, log it all
9 so you have a record of what's on what tape and whereabouts.

10 Then you capture all that in the computer.

11 Then basically edit it, and we were doing it nonlinearly,
12 meaning we could take pieces and drag and drop them wherever
13 we wanted to help, you know, tell the story.

14 **Q.** That means that you are not there snipping pieces of film;
15 you are doing it digitally, is that correct, with a computer?

16 **A.** That's correct.

17 **Q.** And that's a lot easier than snipping, right?

18 **A.** A lot easier than snipping it. It becomes a lot more
19 creative process because you can do things, make changes, see
20 how this will look, decide you don't like it. Whereas
21 physically cutting tape is a linear process, and going back
22 and redoing anything involves a lot more time.

23 **Q.** The footage, the raw footage, where did that come from?

24 **A.** Briana provided all the raw footage for the video.

25 **Q.** And then somehow was it -- I don't know if this is the

1 right word -- digitalized?

2 **A.** Yes. The original footage was in several different
3 formats. Some was film, eight millimeter. Some was digital
4 already. Some was on VHS. So various formats.

5 **Q.** You have the skills to be able to put it all into digital
6 form; is that correct?

7 **A.** That's correct, yes.

8 **Q.** That's who you are; that's what you do?

9 **A.** Uh-huh.

10 **Q.** People might call you, what, a computer nerd, right?

11 **A.** Yeah.

12 **Q.** That's a phrase that is used for people with your kind of
13 skills, right?

14 **A.** Uh-huh.

15 **Q.** How much were you paid to participate in this?

16 **A.** I don't believe I was paid anything. It was a long time
17 ago, so my recollection isn't that great. But I don't have
18 any records of a computer, of ever receiving any money for the
19 project.

20 **Q.** Was Briana a person of means at the time? A lot of
21 money -- did she have a lot of money?

22 **A.** No.

23 **Q.** Now, when did you actually begin the processing, the --
24 would digitalizing or -- tell us what you did first.

25 **A.** Digitizing, yeah, that would be correct. After watching

1 all the footage and logging it into the computer, at what time
2 what scene occurs, you know, we are looking through the video
3 for scenes of interest, things that we might want to use in
4 the final video, or particular scenes that, you know, might be
5 useful in the final video.

6 After logging all that, then we are able to basically say,
7 for this tape we want scene A, B, C, D, E, F, G, and the
8 computer will rewind, fast forward the tape, and grab just
9 those scenes and digitize them.

10 Q. When did you begin that process?

11 A. Of actually capturing thumbnails?

12 Q. Yes.

13 MR. BLOOM: May the record reflect the witness is
14 looking at a document.

15 A. It will take me a couple pages here.

16 BY MR. BLOOM:

17 Q. Sure.

18 A. These are all files from an animation sequence, so there's
19 a lot of them.

20 Q. Animation sequence in Watch or in something else?

21 A. In Watch.

22 If I had the computer, I could do all this a lot faster.

23 Q. Okay. Take your time. Just come up with the best answer
24 you can.

25 A. Well, I've got -- I mean, these are the batch lists that

1 show all the files. Unfortunately, I don't have the dates on
2 these printed out.

3 Q. Let me withdraw that question.

4 As you remember what year it was, I think you said it was
5 2001?

6 A. Yeah. Well, I know we didn't render out the intro-
7 animation until we started editing the project, and that was
8 on March 25 that that was rendered out. The first news clip
9 in the video, we captured that on March 24.

10 Q. Now, did there come a time when the editing -- as the
11 editing was going along, that there was a decision made about
12 the very first scene that was going to be shown?

13 A. Yes.

14 Q. And that was somebody breaking a television set with a
15 sledge hammer; is that correct?

16 A. That's correct.

17 Q. And whose television set was that?

18 A. It was my television set.

19 Q. Was it already broken?

20 A. Yeah, it didn't work any more.

21 Q. Who was the person that you -- did somebody actually film
22 that, or take that --

23 A. Yes, I filmed that scene. That scene was actually kind of
24 my idea. It provided some technical difficulties,
25 rotoscoping, and so I wanted to do that scene.

1 Q. To develop your technical skill?

2 A. That's correct.

3 Q. Who was the person who was holding the sledge hammer?

4 A. Briana was.

5 Q. So when, if your records indicate, the work on the
6 project, was it 9:00 to 5:00, was it -- when, do you recall,
7 or if your records reflect --

8 A. We were mostly working late, like 6:00, 7:00 on, because I
9 was running a business. So we would do it after business
10 hours.

11 Q. You say 6:00, 7:00; you mean 6:00, 7:00 p.m.?

12 A. That's correct.

13 Q. Until about when?

14 A. Sometimes 3:00 or 4:00 in the morning.

15 Q. You would be working on it together?

16 A. Yes.

17 Q. And for how long did that go on; was it days, weeks,
18 months?

19 A. Weeks.

20 Q. Did there come a time when there was a finished product?

21 A. What was that?

22 Q. Was there a time there became a final, finished product?

23 A. Yes, that's correct.

24 Q. About when was that?

25 A. Let's see, the last day I have would be like April 17th,

1 was when we printed out the cover for the video. So the video
2 would have been produced at that point.

3 Q. If you were to see it, would you be able to recognize that
4 that's your work?

5 A. Yes.

6 MR. BLOOM: I would like to start the film, with the
7 Court's permission. I would like to offer it into evidence.

8 THE COURT: Just a minute. Is there an issue with
9 this?

10 MR. BARTLETT: I do, Your Honor. I object.

11 THE COURT: All right.

12 MR. BARTLETT: I have no objection to the video being
13 entered into evidence. The jury can see it back in the jury
14 room, if they choose to see the 60 minute video. I think it
15 is irrelevant to this jury's deliberation.

16 BY MR. BLOOM:

17 Q. Does this video reflect how Briana Waters was spending her
18 time, both editing and filming?

19 A. Yeah, I think so.

20 MR. BLOOM: I would like to show this to the jury,
21 please.

22 THE COURT: I will take it up at the end of the day
23 as to this movie, but continue asking whatever questions you
24 may have.

25 MR. BLOOM: I don't have any other questions of this

1 witness.

2 THE COURT: Okay.

3 CROSS-EXAMINATION

4 BY MR. BARTLETT:

5 Q. Can I just clarify one thing in my mind. You said that
6 there was -- I understand the video was finished April 17?

7 A. Uh-huh.

8 Q. With regard to the actual film footage that you put into
9 the computer that you are kind of cutting and pasting, was
10 that filming going on during this time period at Watch
11 Mountain?

12 A. No, all the footage had already been filmed at that time.

13 Q. Do you know when that filming had ended?

14 A. No, I do not.

15 MR. BARTLETT: Nothing further.

16 THE COURT: Do you have any other questions for this
17 witness?

18 MR. BLOOM: No, I don't.

19 THE COURT: Then you may step down.

20 Your next witness.

21 MR. BLOOM: May I have a moment, please?

22 We've offered A-69 into evidence, and I would like to play
23 it for the jury.

24 THE COURT: I said I would like to take it up at the
25 end of the day.

1 MR. BLOOM: It affects what we have here because we
2 have witnesses --

3 THE COURT: I will take it up at the end of the day.
4 You may call your next witness.

5 MR. BLOOM: Well, we have a problem because the next
6 witnesses have been objected to.

7 THE COURT: Well, I don't know if you have anybody
8 else to call or not. You should have your witnesses lined up,
9 so you can go see if you have any out there.

10 MR. BLOOM: Could I ask the jury be excused so we can
11 discuss this?

12 THE COURT: All right. Keep your books on your chair
13 and step out for a moment.

14 (Jury not present.)

15 THE COURT: All right, you may be seated.

16 Yes.

17 MR. BLOOM: Yes. Apparently there's no objection to
18 it being admitted. Given that the prosecution was able to
19 publish and should be able to publish anything that's in
20 evidence, I would like to publish what's in evidence. I don't
21 see any problem with that.

22 THE COURT: Okay.

23 MR. BLOOM: Now, the fact is that because of the
24 issues raised by the prosecution with regard to their efforts
25 to limit our character witnesses, the witnesses that we have

1 prepared to testify are going to be a problem. The Court has
2 indicated that if they testify to character, you are going to
3 strike the testimony of the witnesses. We surely don't want
4 that to happen.

5 THE COURT: I want you to talk about that exhibit
6 there.

7 MR. BLOOM: There's no objection to it going into
8 evidence.

9 THE COURT: Well, I heard an objection. I have to
10 hear from that side. You tell me -- you don't think there's
11 any objection, it's admitted, and they should see it. Is that
12 right?

13 MR. BLOOM: Yes.

14 THE COURT: Then let me hear from you.

15 MR. BARTLETT: Your Honor, I misspoke earlier. I am
16 tired, it's at the end of the day, I apologize to the Court.

17 I do not want this video admitted into evidence. I am
18 objecting to its admission on the grounds of 403, relevance,
19 and I will put that on the record before the jury. I wasn't
20 trying to sandbag anybody.

21 I don't think it's relevant. I would ask the next witness
22 be called, and the argument with regard to the relevance of
23 the Watch video be put off until after the witnesses are
24 called, and we can get through some stuff today.

25 THE COURT: Do you have any other witnesses?

1 MR. BLOOM: I have.

2 THE COURT: I don't remember this coming up before
3 about this video, other than discussion about it, in terms of
4 it being an exhibit, and the court hasn't addressed that in
5 any way. So I would have to not only go over the objections;
6 I need to see what that is because I don't know what you are
7 trying to make of this. So I would be concerned about it from
8 that standpoint.

9 I will look at it. I don't know if it says any more than
10 the witnesses have said, but I need to look at it to see.

11 MR. BLOOM: There has never been, before now, any
12 objection to this exhibit. They have never filed any motion
13 with regard to a motion in limine. We gave them a copy of
14 this maybe a year ago. There's never been any indication that
15 there was going to be an objection.

16 Mr. Bartlett talks about not trying to sandbag us. In
17 fact, there has never been an objection. They had every
18 opportunity. We have said we were going to put this in
19 evidence. I have said it in my opening statement, that I hope
20 you get to see it, if the judge permits it.

21 MR. BARTLETT: And that's an indication, Your Honor,
22 that Mr. Bloom in his opening statement realized --

23 MR. BLOOM: Excuse me, but I wasn't finished.

24 MR. BARTLETT: I'm sorry, Your Honor, I thought he
25 was done.

1 MR. BLOOM: There has never been an indication before
2 now that we would not be permitted to show this video. Never.
3 Never any indication that they were going to object to it, not
4 once. Not one objection after the opening statement. Not one
5 objection when we put it on our exhibit list. Nothing. They
6 now are trying to stop this jury from seeing what it was and
7 how Briana Waters spent her time, after putting in Disneyland,
8 Statue of Liberty.

9 Judge, this is just not right for the jury not to see how
10 she spent her time for a period of three years during the
11 period of the alleged conspiracy; how she spent her time
12 editing this day and night with regard to the period just
13 before the arson of which she's accused.

14 THE COURT: And that's what you wanted to show, is
15 that the purpose of it?

16 MR. BLOOM: It also rebuts the very clear efforts to
17 prove, by the government, that she's promoting violence. This
18 proves what she did, who she is, how she was spending her
19 time, both during the filming and the campaign and the editing
20 and later the distribution of this video.

21 THE COURT: If you have to sum it up in one statement
22 as to what you intend to have this movie portray, tell me
23 that.

24 MR. BLOOM: What I just said.

25 THE COURT: You are going on and on. Can you briefly

1 summarize it for me?

2 MR. BLOOM: How, during the period of the alleged
3 conspiracy, how she spent her time. How she was not involved
4 in violence. How she was involved in what was testified to,
5 as an effort to bring together diverse forces; the loggers on
6 the one hand --

7 THE COURT: You are getting as long on this one as
8 the other one.

9 I am going to get to you, Mr. Bartlett.

10 I am trying to understand -- let me see if I can
11 summarize. You want the film to show what she was doing at
12 this point in time, correct?

13 Is that correct?

14 MR. BLOOM: That's partly correct.

15 THE COURT: Is it correct or not?

16 MR. BLOOM: That part that you have stated is
17 correct, but it is not --

18 THE COURT: This is going to be something about what
19 she was about in terms of character or whatever?

20 MR. BLOOM: No, the part that you stated was correct,
21 but that's not all. What's also important is to show that
22 contrary to the major efforts of the government to prove
23 otherwise, she was not a person who was promoting violence.
24 On the contrary.

25 THE COURT: That's what the movie is intended to do,

1 to show that she was not promoting violence?

2 MR. BLOOM: That is one of the things. The Court
3 stated one thing, and I have added to it.

4 THE COURT: Okay.

5 MR. BLOOM: That this is how she was spending her
6 time. That's part A.

7 Part B, that she was not promoting violence.

8 C, that she was working on this very lawful project during
9 the time, in particular, just preceding the arson that was
10 committed by the Government's witnesses.

11 THE COURT: How she's spending her time is the same
12 thing as working on this project, isn't it?

13 MR. BLOOM: I was being specific as to the time
14 period; that there are really two time periods here. One is
15 the time period that's alleged in Count 1, with regard to the
16 conspiracy; and two is the time period just preceding the
17 arson that was committed by the government witnesses. To show
18 how she was spending her time specifically at that critical
19 time.

20 THE COURT: All right. Have you included everything
21 that I should know about in terms of making a decision as to
22 whether or not they should see it?

23 MR. BLOOM: Let me consult with my cocounsel.

24 THE COURT: All right.

25 (Brief pause.)

1 MR. BLOOM: Yes, there's an additional reason, it's
2 to rebut the evidence that was submitted -- not only submitted
3 and put in evidence over our objection, in the folder, the
4 folder of materials that the witness Kolar claims she received
5 from Briana Waters, the materials where Mr. Bartlett took a
6 yellow highlighting pen and highlighted inflammatory parts of
7 those exhibits and had a witness read to the jury those
8 particular parts.

9 THE COURT: Those particular parts would go to what?

10 MR. BLOOM: The reason it appears, and it was stated,
11 that the alleged relevance of those parts would demonstrate --
12 and I can't see any other reason -- demonstrate that
13 Ms. Waters was somehow in agreement with the portions that the
14 prosecutor highlighted in yellow pen and then had a witness
15 read to the jury.

16 THE COURT: I wish I could get you to narrow things
17 down. Are you saying it's going to rebut some evidence about
18 what the material in those folders said? Is that about
19 violence versus nonviolence?

20 MR. BLOOM: That's a third reason why we would like
21 to play this. And a fourth reason is that she has a Sixth
22 Amendment right to present her case, and that she will be able
23 to testify, it would be hoped, if she testifies, that this is
24 how she was spending her time.

25 This is just to make sure, to answer the question, the

1 Court's question directly, we have given so far, now, four
2 reasons why the Court should permit the jury -- should admit
3 this evidence and permit the jury to see it.

4 Staying on the third reason that I was talking about, for
5 whatever reasons, the Court decided that it was okay for
6 Mr. --

7 THE COURT: I know, I have ruled on all of that. I
8 am trying to get all of your reasons why this should be in.
9 Once I get all of your reasons, I will hear from the other
10 side as to what they think about it, because they are
11 objecting to it. I am trying to get you to give me a
12 completeness of what your position is.

13 MR. BLOOM: That's what I'm doing.

14 THE COURT: Have you done it all?

15 MR. BLOOM: No, I haven't. I wasn't quite finished.

16 THE COURT: What else is there?

17 MR. BLOOM: I was continuing as to the third reason,
18 that Mr. Bartlett chose to essentially adulterate an exhibit
19 by highlighting what clearly are inflammatory portions of
20 materials that were among many documents, and not only chose
21 to highlight it, but actually had a witness read to the
22 jury --

23 THE COURT: I thought you just mentioned that. I
24 heard all of that and saw all of that. I don't think you need
25 to go through all that again. You just need to highlight and

1 tell me what it is you are trying to show.

2 MR. BARTLETT: Your Honor, could I suggest that we
3 finish with witnesses today and bring this up tomorrow morning
4 at 8:15 so we are not wasting the jurors' time? Or at the end
5 of the day.

6 THE COURT: If we keep talking it will be 4:00, and
7 maybe that's the point of it all, I don't know.

8 Do you have another witness out there?

9 MR. BLOOM: We don't have another witness ready to
10 testify.

11 THE COURT: Let's bring the jury in so that I can let
12 them go, and then I will take this matter up.

13 MR. BLOOM: Thank you.

14 THE COURT: And then I am going to deal with the rest
15 of the witnesses.

16 MR. BARTLETT: Your Honor, my understanding is Sarah
17 Vekesi is outside the courtroom.

18 THE COURT: Who?

19 MR. BARTLETT: That Sarah Vekesi is outside the
20 courtroom.

21 MR. BLOOM: I have not had an opportunity to speak
22 with her.

23 THE COURT: If you have a witness out there, can the
24 witness be through in ten minutes?

25 MR. BLOOM: I am sorry?

1 THE COURT: Just a minute.

2 Mr. Fox.

3 MR. FOX: I thought we were rising for the jury.

4 THE COURT: Yes. Do you have a witness there?

5 MR. FOX: There are people that Mr. Bloom has called.
6 I don't believe that Mr. Bloom has prepped one of the
7 witnesses yet.

8 THE COURT: You call these witnesses; surely you've
9 talked to them. You don't call somebody you haven't talked
10 to, do you?

11 MR. BLOOM: I have called and asked this witness to
12 appear. She has come from out of town --

13 THE COURT: All right, you have two minutes to go out
14 there and talk to this witness, and I will bring the jury and
15 you can call your witness.

16 MR. BLOOM: I am asking if we can break today so that
17 I can have the opportunity to prepare my witness. Is the
18 Court denying me that opportunity?

19 THE COURT: Mr. Bloom, you know, you are really
20 trying my patience.

21 MR. BLOOM: I am sorry I am doing that, Judge. I am
22 just asking for a ruling, and I am asking the question. I am
23 giving you the facts.

24 THE COURT: I will bring in the jury and I am going
25 to let them go home, but let me say this to you: You are

1 pushing the envelope with me. Stop it.

2 Bring in the jury.

3 (Jury present.)

4 THE COURT: Okay, you may be seated.

5 Ladies and gentlemen, I am going to recess this matter for
6 tonight and you are going to get your next witness first thing
7 tomorrow morning at nine clock. Rather than have you around
8 while we take care of some business here, you might as well --
9 we have ten minutes to go, so you might as well be on your
10 way.

11 As always, do not discuss the case or do anything about
12 the case. Everything you need to decide the case you will
13 receive here in the courtroom.

14 Have a good evening. Leave your books on the chair. See
15 you here at 9:00.

16 (Jury not present.)

17 THE COURT: All right, you may be seated.

18 MR. FOX: Your Honor, there is another person out
19 there, but I think he would probably --

20 THE COURT: Well, I just wanted --

21 MR. FOX: He would probably fit under the character
22 thing that the prosecutor is objecting to.

23 THE COURT: Stop your stalling, and let's get this
24 case moving.

25 Are you finished saying what you have to say about the

1 exhibit?

2 MR. BLOOM: No, I have one more thing to say.

3 THE COURT: Briefly give that to me, if that's
4 possible.

5 MR. BLOOM: Today in the court, Mr. Bartlett did a
6 masterful job of attempting to impeach the witness --

7 THE COURT: What is it you want me to see in this
8 exhibit? I am talking about this exhibit. Is that what you
9 are talking about?

10 MR. BLOOM: Yes, I am.

11 THE COURT: Then please get to the point.

12 MR. BLOOM: -- did a masterful job of attempting to
13 impeach the witness James Dawson with reference to the Earth
14 First, suggesting that they were involved in violence.

15 Indeed, the people who were involved with Ms. Waters in the
16 town of Randle, some of them were members of Earth First.

17 We want to show this video for yet another reason, and
18 that reason is to neutralize and to address the devastating
19 impeachment brought upon by Mr. Bartlett of the witness James
20 Dawson.

21 There was no question that the jury would be affected by
22 those kinds of questions, and we want to -- yet another
23 reason, a fifth reason we want to show this video, is to rebut
24 the implications that were raised by Mr. Bartlett's
25 interrogation -- I should say questioning, cross-examination

1 of Mr. Dawson. So that's yet another reason why we believe
2 this video should be shown.

3 THE COURT: Have you completed everything on it?

4 MR. BLOOM: Yes.

5 THE COURT: Mr. Bartlett? Let me hear from you.

6 MR. BARTLETT: Your Honor, it's the equivalent of
7 somebody being charged with a bank robbery and wanting to
8 bring in that during the pendency of the bank robbery they
9 have also written a fine novel and want to introduce and read
10 the novel to the jury. It is simply irrelevant. She's talked
11 about this. In fact, we've heard a lot of information from
12 the witness exactly what she was involved in.

13 It is my understanding she's going to testify, and she can
14 describe all of those things.

15 But in truth, the video itself is irrelevant. It has
16 nothing to do with this case. She can talk about what she's
17 done. In fact, we've heard a lot of testimony about it. I
18 don't think there's any question in the jury's mind. But
19 under a 403 analysis, it's simply not relevant to this jury's
20 consideration.

21 She was involved in making a video, as I understand it,
22 all of the filming of which was finished in 1999 and the
23 editing of which was finished in April 2001. I just don't
24 understand the relevance of that to the jury.

25 I simply don't think that the Court should waste an hour

1 of this Court's time watching this video.

2 THE COURT: That's your objection?

3 MR. BLOOM: May I ask to rebut that?

4 Mr. Fox has some ideas that he's trying to convey to me,
5 but I think it would save time if the Court would hear him
6 directly.

7 MR. FOX: To do the rebuttal to Mr. Bartlett rather
8 than Mr. Bloom.

9 THE COURT: I will hear this. It's a motion; I will
10 hear this.

11 MR. FOX: Your Honor, if the government hadn't
12 consistently raised issues about what was inside of
13 Ms. Waters' mind in the spring of 2001; if the government
14 hadn't brought in the Hey Woman folder and argued to the jury,
15 hey, this is what Briana Waters -- this is the type of thing
16 that she was thinking at the time -- if the government hadn't
17 brought in Tiffany Tudder to talk about the statements to the
18 New York Times reporter, to argue this is the type of
19 person -- because of their statements, because of their
20 beliefs, is the type of person who could commit an arson,
21 well, then perhaps the actual video of Watch would be
22 irrelevant.

23 But we need to show this video to rebut what the
24 government has raised about Ms. Waters' beliefs.

25 They have presented their evidence. We've objected; you

1 let it in. We would like now to present evidence of what
2 Ms. Waters was thinking and what her belief system was, only
3 to rebut what they plan to introduce and what they plan to
4 argue to the jury.

5 Thank you.

6 MR. BARTLETT: Your Honor, under Federal Rule of
7 Evidence 404, you can prove character through reputation and
8 opinion. You cannot prove it through specific instances.
9 What they are attempting to do is to violate Rule 404.

10 MR. FOX: It's not character, Your Honor.

11 MR. BARTLETT: It is character, Your Honor.

12 THE COURT: At some point in time you have to stop
13 talking and then it's going to become my decision.

14 MR. FOX: That's true.

15 THE COURT: Now, I think I have heard everybody as to
16 why you say it ought to be in and why you say it shouldn't be
17 in. That's what the Court will have to look at and decide.

18 I don't know what this exhibit is about.

19 MR. FOX: Would the Court like to see it tonight?

20 THE COURT: I don't know if I want to sit up all
21 night and watch this. I might want to watch something else.
22 But I will have to know something about this before I make my
23 decision.

24 I think it is fair to say, and I can take this from your
25 position, it's not about any of this. It's about -- and I

1 think we heard the testimony of Ms. Troxel, I think it was,
2 about what was going on and all this good work about the
3 logging and what it would do to that community. It's all
4 about Watch Mountain and those kind of effects. So it's all a
5 good thing, I guess, in terms of what Ms. Waters was doing as
6 it comes to conservation and those kind of things.

7 MR. FOX: Or really what is inside her mind, Your
8 Honor. I guess if the government brings in the Hey Woman
9 folder, Tiffany Tudder, to say this is the real Briana Waters,
10 well, this rebuts that.

11 THE COURT: That wasn't my question. My question, is
12 it about what I just said?

13 MR. FOX: No, is the topic of the movie about that?

14 THE COURT: Yes.

15 MR. FOX: Yes.

16 THE COURT: And then it's going to show then, maybe,
17 what's going on in her mind by what she's producing?

18 MR. FOX: Yes.

19 THE COURT: I think that's what I said. Somehow I
20 don't seem to get through to folks very well. But that's the
21 issue?

22 MR. FOX: Right.

23 THE COURT: All right. You have some witnesses lined
24 up for tomorrow now, and you have all the time you need to
25 talk to them?

1 MR. BLOOM: Yes.

2 THE COURT: I want you to do the same thing I have
3 asked before. Give the other side who's going to testify and
4 the gist of that testimony so we don't have to stop all these
5 things because they don't know what these witnesses -- I asked
6 them to do it for you. I am asking you to do it for them. I
7 don't know what the problem is here.

8 MR. BLOOM: Fair enough.

9 MR. FOX: Your Honor, if the Court does want to take
10 the time, there is a copy here. We can get you another copy.

11 THE COURT: Okay. I would imagine one is there, if
12 you did what I asked you to do.

13 MR. FOX: It's been premarked, so it is there.

14 THE COURT: That's what I said.

15 MR. FOX: It's A-169. Thank you.

16 THE COURT: All right. And we say we are ready at
17 9:00 in the morning for the jury. If anything else needs to
18 come up about this -- I am expecting you to have witnesses
19 here and ready to go. If I don't get to that during that
20 time, I want you ready to go at 9:00.

21 MR. BLOOM: We will be. And I should point out, we
22 put on ten witnesses today. Not easy. We have done the best
23 we can.

24 THE COURT: I am talking about tomorrow.

25 MR. BLOOM: And we will do the best we can tomorrow.

1 THE COURT: But we came short at the end of the day
2 today.

3 Let me ask you to do this -- and I mentioned this once
4 before -- don't assume because you bring in a witness there
5 will be cross-examination, if you are trying to figure time in
6 the day. Bring enough witnesses assuming nobody is going to
7 cross-examine, and you don't run out of witnesses. I want to
8 do a day's work, and that's what I come here to do. So don't
9 make me quit early, okay?

10 We'll be at recess. I will see you back here at 8:30.

11 THE CLERK: All rise, court is adjourned.

12 (The Court recessed to Wednesday, February 27, 2008,
13 at the hour of 8:45 a.m.)

14 | * * * *

15 | C E R T I F I C A T E

16

17 I certify that the foregoing is a correct transcript from
18 the record of proceedings in the above-entitled matter.

19

20 /S/ Teri Hendrix May 5, 2008

21 | Teri Hendrix, Court Reporter Date _____

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